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INDEX TO The Gazette of India.

JANUARY TO JUNE 1887.

PART V.

ILLS INTRODUCED INTO THE COUNCIL OF THE GOVERNOR GENERAL FOR MAKING LAWS AND REGULATIONS,
OR PUBLISHED UNDER RULE 22:—

| | Page |
|--|------|
| No. 27 of 1886:—A Bill to amend the Code of Criminal Procedure, 1882 | 1 |
| No. 1 of 1887:—The Inventions and Designs Bill, 1887 | 3 |
| No. 2 (P):—A Bill to amend the Indian Companies Act, 1882 | 19 |
| No. II (P):—The Indian Marine Bill, 1887 | 59 |
| No. 3 of 1887:—The Indian Marine Bill, 1887 | 21 |
| No. 4 of 1887:—The Indian Marine Bill, 1887 | 35 |
| No. 5 of 1887:—The Lower Burma Courts Bill, 1887 | 47 |
| No. 6 of 1887:—A Bill to amend the Indian Stamp Act, 1879 | 51 |
| No. 7 of 1887:—A Bill for the Protection of Game | 53 |
| No. 7 of 1887:—The Allahabad University Bill, 1887 | |

INDEX TO
The Gazette of India.

JULY TO DECEMBER 1887.

PART V.

BILLS INTRODUCED INTO THE COUNCIL OF THE GOVERNOR GENERAL FOR MAKING LAWS AND REGULATIONS, OR
PUBLISHED UNDER RULE 22:—

| | Page |
|---|------|
| No. 2 of 1887 :—A Bill to amend the law relating to the Regulation of Police | 129 |
| No. 8 of 1887 :—A Bill for the Regulation of Military Police in Burma | 71 |
| No. 9 of 1887 :—A Bill to provide for the establishment of bonded warehouses at places other than customs- ports | 75 |
| No. II.—The Punjab Tenancy Bill | 81 |
| No. II.—The Punjab Land-Revenue Bill | 103 |
| No. 10 of 1887.—A Bill to make better provision for recovering certain public demands | 127 |

5499
5499



The Gazette of India.

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CALCUTTA, SATURDAY, JANUARY 1, 1887.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 17th December, 1886:—

NO. 27 OF 1886.

A Bill to amend the Code of Criminal Procedure, 1882.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882; It is hereby enacted as follows:—

1. In the definition of "Officer in charge of a Police-station" in section 4, clause (c), of the said Code there shall be substituted for the word "therefrom" the words "from the station-house", and for the words "present at the Police-station" the words "present at the station-house".

2. In section 312 of the said Code the word "four" shall be substituted for the word "two".

STATEMENT OF OBJECTS AND REASONS.

The primary object of this Bill is to amend section 312 of the Code of Criminal Procedure, 1882, the Hon'ble the Chief Justice and Judges of the High Court at Fort William having represented that, as the law at present stands, owing to the numerous absences from Calcutta of gentlemen whose names are on the special jury list, and to the necessity of excusing special jurors from attendance on sufficient grounds, it is found necessary to summon the same gentlemen very frequently, to their manifest inconvenience and to serious interference with their business avocations.

2. A Bill to amend the Code having thus become necessary, the opportunity has been taken to cure a defect which has been noticed by the Government of Bombay in the definition of the expression "Officer in charge of a Police-station."

ANDREW R. SCOBLE.

The 17th December, 1886.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.



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PART V.

Bills introduced into the Council of His Excellency the Governor General for making Laws and Regulations or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 7th January, 1887:—

NO. 1 OF 1887.,

THE INVENTIONS AND DESIGNS BILL, 1887.

CONTENTS.

SECTIONS.

1. Title, extent and commencement.
2. Repeal.
3. Division of Act into Parts.

PART I.

INVENTIONS.

4. Definitions.
5. Application for leave to file specification.
6. Order to file specification.
7. Applications in respect of contemporaneous inventions.
8. Acquisition and continuance of exclusive privilege.
9. Form and contents of specification.

SECTIONS.

10. Mode of filing application and specification.
11. Delivery and distribution of copies of specification.
12. Register of inventions.
13. Address-book.
14. Provisions with respect to the register and book.
15. Extension of exclusive privilege.
16. Imposition of conditions with respect to exclusive privilege.
17. Exclusive privilege to bind the Government.
18. Application for leave to file memorandum or amended specification.
19. Effect of amended specification.
20. Bar to exclusive privilege in certain cases.
21. Novelty of invention dependent on public use or knowledge thereof before application to file specification.
22. Effect of public use or knowledge of invention in fraud of inventor.
23. Effect of public use of invention by inventor for purpose of experiment or trial.
24. Effect of public use or knowledge of patented invention between application for patent and application to file specification.

SECTIONS.

25. Effect of like public use or knowledge of unpatented invention.
26. Effect of public use or knowledge of invention after admission to an exhibition.
27. Cessation of exclusive privilege by order of the Government.
28. Cessation of exclusive privilege on revocation of patent.
29. Suit for infringement of exclusive privilege.
30. Application to declare exclusive privilege in respect of an invention not to have been acquired.
31. Like application as to part of an invention.
32. Application on breach of condition.
33. Notice of proceedings to persons interested.
34. Framing issue for trial before other Court.
35. Order on application.
36. Delivery of particulars.
37. Title of actual inventor to exclusive privilege in case of fraud.
38. Transmission of copies of decrees and orders to Secretary.
39. Registration of cessation of exclusive privilege.
40. Rectification of register of inventions or address-book.
41. Power to High Court to stay proceedings on or dismiss certain applications.
42. Power for Governor General in Council to require grant of licenses.
43. Agents.
44. Verification of applications.
45. Fees.
46. Rules and forms.

PART II.

DESIGNS.

SECTIONS.

47. Definitions.
48. Application for order for registration of design.
49. Registration in register of designs.
50. Acquisition of copyright.
51. Marking registered designs.
52. Effect of exhibiting unregistered designs at exhibitions.
53. Suit for infringement of copyright.
54. Mutation of names in register of designs.
55. Registration of cessation of copyright.
56. Rectification of register of designs.
57. Power to High Court to stay proceedings on or dismiss application for rectification of register.
58. Provisions with respect to register of designs.
59. Fees.
60. Rules and forms.

THE FIRST SCHEDULE.—ENACTMENTS REPEALED.

THE SECOND SCHEDULE.—APPLICATION WHERE PATENT HAS NOT BEEN OBTAINED.

THE THIRD SCHEDULE.—APPLICATION WHERE PATENT HAS BEEN OBTAINED.

THE FOURTH SCHEDULE.—FEES. (*Inventions*).

THE FIFTH SCHEDULE.—FEES (*Designs*).

*The Inventions and Designs Bill.**(Part I.—Inventions.—Sections 1-5.)*

A Bill to consolidate and amend the law relating to the Protection of Inventions and Designs.

WHEREAS it is expedient to consolidate and amend the law relating to the protection of inventions and designs; It is hereby enacted as follows:—

1. (1) This Act may be called the Inventions and Designs Act, 1887.

Title, extent and commencement. (2) It shall extend to the whole of British India; and

(3) It shall come into force on the first day of January, 1888.

2. (1) The enactments described in the first schedule are hereby repealed to the extent specified in the third column thereof.

[46 & 47 Vic., c. 57, s. 113.] (2) But this repeal of enactments shall not affect any exclusive privilege acquired, or any conditions or restrictions imposed with respect to any such privilege, or any right or liability accrued or incurred, under any of those enactments before the commencement of this Act, or any relief in respect of any such privilege, right or liability.

[L. R. 9 App. Cas. 589.]

(3) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

3. The remainder of this Act is divided into Parts, as follows:—

PART I.—INVENTIONS.

PART II.—DESIGNS.

PART I.

INVENTIONS.

4. In this Part, unless there is something repugnant in the subject or context,—

(1) "invention" includes an improvement

[Act XV, 1859, s. 38.]

[Act XV, 1859, s. 17.]

(2) "inventor" does not include the importer into British India of a new invention unless he is the actual inventor:

[New.]

(3) "applicant" means a person who has applied under this Part for leave to file a specification of an invention, whether he has filed the specification or not:

[Act XV, 1859, s. 38.]

(4) "assign" includes a grantee of the exclusive privilege of making, selling or using an invention, or of authorising others so to do, during the term for which the privilege is to

continue or may be extended, or for any shorter term:

(5) "inventor," "actual inventor" and "applicant" include the executors, administrators or assigns of an inventor, actual inventor and applicant, as the case may be:

(6) "manufacture" includes any art, process or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture:

(7) "write" includes print, lithograph, photograph, engrave, and every other mode in which words or figures can be expressed on paper or on any substance:

(8) "Secretary" means a Secretary to the Government of India appointed by the Governor General in Council to discharge the functions of the Secretary under this Act, and includes any under-secretary or assistant-secretary to the Government of India to the extent to which he may be authorised by general or special order of the Governor General in Council to discharge any of those functions:

(9) "District Court" has the meaning assigned to that expression by the Code of Civil Procedure: and

XIV of

(10) "High Court" has the meaning assigned to that expression by the Code of Criminal Procedure in reference to proceedings against European British subjects.

5. (1) The inventor of a new manufacture, whether he is a British subject or not, may apply to the Governor General in Council for leave to file a specification thereof.

(2) The application must be in writing signed by the applicant and in the form or to the effect of the second schedule if the inventor has not obtained a patent in the United Kingdom, and in the form or to the effect of the third schedule if he has obtained a patent in the United Kingdom.

(3) It must state the name, occupation and address of the applicant, and, where a patent has been obtained in the United Kingdom, the date of the patent and the date of the actual sealing thereof, and must describe with reasonable precision and detail the nature of the invention, and be supplemented by such further particulars relating to the invention, and by such drawings or models illustrative thereof, as the Governor General in Council may see fit to require from the applicant.

(4) Nothing in this section shall be deemed to preclude an inventor who has applied for a patent in the United Kingdom from applying, while his application for the patent is still pend-

*The Inventions and Designs Bill.**(Part I.—Inventions.—Sections 6-11.)*

ing, for leave to file a specification under this Part.

XV,
s. 2.]

6. (1) Upon an application under the last foregoing section the Governor General in Council may, after such inquiry as he thinks fit, make an order authorising the applicant to file a specification of the invention.

XV,
s. 3.]

(2) Before making an order under sub-section (1), the Governor General in Council may direct that the application be referred for enquiry and report to any person whom he thinks fit.

(3) If that person makes the enquiry and report, he shall receive such fee for his services as the Governor General in Council, after considering the report, may determine.

(4) The fee shall be paid by the applicant, who shall, before the application is sent for enquiry and report to the person appointed under sub-section (2), deposit, in such place and within such time as the Governor General in Council may by rule or otherwise prescribe, such sum as will, in the opinion of the Governor General in Council, be sufficient to cover the amount of the fee.

(5) If the sum is not deposited in the place and within the time prescribed, the application may be rejected.

(6) If the fee as determined by the Governor General in Council exceeds the sum so deposited, an order shall not be made under sub-section (1) until the applicant has paid the balance of the fee.

(7) If the sum deposited exceeds the fee so determined, the excess shall be refunded to the applicant.

7 Vic.,
13.]

7. (1) If two or more inventors apply on the same day for leave to file specifications of inventions which appear to the Governor General in Council to be identical or so similar as to be practically identical, the Governor General in Council may, in his discretion, authorise both or all the applicants, subject to the other provisions of this Part, to file specifications of their respective inventions.

(2) If they apply on different days for leave to file specifications of such inventions as aforesaid, the applicant who applied on the first of the different days shall be deemed to have a preferential claim to an order authorising the filing of his specification.

7,
4.]

8. (1) If within six months from the date of an order under section 6, sub-section (1), or within such further time, not exceeding three months, as the Governor General in Council, in his discre-

tion, may, on cause shown to his satisfaction and on payment of the fee prescribed in that behalf in the fourth schedule, see fit to allow, the applicant causes a specification of his invention to be filed in manner by this Part required, and the fee prescribed in the fourth schedule in respect of the filing of the specification to be paid, the applicant shall, subject to the other provisions of this Part, be entitled to the exclusive privilege of making, selling and using the invention in British India, and of authorising others so to do, for a term of fourteen years from the date of the filing of the specification.

(2) But an exclusive privilege in respect of an invention of a new manufacture shall, notwithstanding anything in sub-section (1), cease if the inventor fails to pay, within the time limited in that behalf by the fourth schedule, any fee prescribed in that schedule in respect of the continuance of the privilege. [46 & 47 Vic., c. 57, s. 17.]

(3) If, nevertheless, in any case, by accident, mistake or inadvertence, an inventor fails to pay any such fee within the time so limited, he may apply to the Governor General in Council for an enlargement of the time for making the payment.

(4) Thereupon the Governor General in Council may enlarge the time accordingly, on payment of the fee prescribed in that behalf in the fourth schedule and subject to the following conditions, namely:—

(a) the time for making a payment shall not in any case be enlarged for more than three months; and

(b) if any suit is instituted in respect of an infringement of the exclusive privilege committed after a failure to make a payment within the time limited for the making thereof and before the enlargement of that time, the Court disposing of the suit may, if it thinks fit, refuse to award or give any damages in respect of the infringement.

9. A specification of an invention filed under this Part must be in writing signed by the applicant, and must particularly describe and ascertain the nature of the invention and in what manner it is to be performed. [Act XV, 1859, s. 6.]

10. Every application for leave to file a specification, and every specification filed under this Part, must be left with, or sent by post to, the Secretary, and the date of the delivery or receipt thereof shall be endorsed thereon and recorded in his office. [Act XV, 1859, s. 7.]

11. (1) At the time of delivering or sending the specification for the purpose of its being filed, the applicant shall cause to be [Act XV, 1859, s. 10.]

Delivery and distribution of copies of specification.

*The Inventions and Designs Bill.**(Part I.—Inventions.—Sections 12-17.)*

delivered or sent to the Secretary three copies thereof, of which—

- (a) one shall be sent to and filed by the Government of Fort St. George;
- (b) one shall be sent to and filed by the Government of Bombay; and
- (c) one shall be retained by the Secretary.

(2) The copies of the specification which are sent under sub-section (1) to the Governments of Fort St. George and Bombay shall be open to the inspection of any person at all reasonable times at places to be appointed by those Governments.

XV,
s. 11.]

12. (1) A book, to be called the register of inventions, shall be kept in the office of the Secretary wherein shall be entered and recorded every application for leave to file a specification, every order made on any such application, every specification filed and every proceeding relating to the invention therein mentioned.

(2) Every specification shall be numbered according to the order in which it is entered in the register of inventions, and a reference shall be made in that register, in the margin of the entry of each specification, to every order relating to the invention and to every application, memorandum or amended specification which may be filed under this Part.

XV,
s. 35.]

13. (1) Another book, to be called the address-book, shall be kept in the office of the Secretary wherein any person filing a specification under this Part, or any person in whom an exclusive privilege acquired under this Part, or any share or interest therein, may become vested, may from time to time cause to be stated some place in British India where notice of any rule or proceeding relating to the exclusive privilege may be served on him.

(2) A reference to each entry in the address-book shall be made in the register of inventions in the margin of the entry of the specification in that register.

XV,
s. 12.]

14. (1) An entry in the register of inventions or address-book shall, for the purposes of the law of evidence for the time being in force, be deemed to be a public document, and the register and book, or copies thereof, shall be open to the inspection of any person at all reasonable times at the office of the Secretary.

47 Vic.,
s. 114.]

(2) The books kept under section 11 and section 35 of Act No. XV of 1859 (*an Act for granting exclusive Privileges to Inventors*) shall be deemed to be parts of the register of inventions and address-book respectively.

15. (1) The inventor of a new manufacture [Act XV, 1859, s. 4, and 46 & 47 Vic., c. 57, s. 25.] may, at any time not more than one year and not less than six months before the time limited for the expiration of an exclusive privilege acquired under section 8, apply to the Governor General in Council for an extension of the privilege for a further term.

(2) When an application is made under sub-section (1), the Governor General in Council may, if he thinks fit, refer it to a High Court for report.

(3) The Court to which the petition is referred shall, in making its report, have regard to the nature and merits of the invention in relation to the public, to the profits made by the inventor as such, and to all the circumstances of the case.

(4) The procedure on the reference shall be such as the Court thinks fit.

(5) If the Governor General in Council is of opinion, or, where a reference has been made under sub-section (2), if the Court reports, that the inventor has been inadequately remunerated by his exclusive privilege, the Governor General in Council may, on payment of the fee prescribed in that behalf in the fourth schedule, make an order extending the term of the privilege for a further term not exceeding seven or, in exceptional cases, fourteen years from the expiration of the first term of fourteen years.

16. An order under section 6, sub-section (1), [Act XV, 1859, s. 5.] authorizing the filing of a specification, or under section 15, sub-section (5), extending the term of an exclusive privilege, may be made subject to such conditions as the Governor General in Council thinks expedient.

17. (1) Subject to any conditions imposed under the last foregoing section— [46 & 47 Vic., c. 57, s. 27.]

(a) with respect to the filing, by a person employed in the service of Her Majesty in India, of the specification of a manufacture invented by him in the course of his employment, or

(b) with respect to the extension, in favour of any person, of the term of an exclusive privilege,

an exclusive privilege acquired under this Part shall have to all intents the like effect as against Her Majesty as it has against a subject.

(2) But the officers or authorities administering any department of the service of Her Majesty may, by themselves, their agents, contractors or others, at any time after the delivery or receipt of the application for leave to file the specification of an invention, use the invention for the services of the Government on terms to be before or after the use thereof agreed on, with the approval of the Governor General in

*The Inventions and Designs Bill.**(Part I.—Inventions.—Sections 18-24.)*

Council, between those officers or authorities and the inventor, or, in default of such agreement, on such terms as may be settled by the Governor General in Council.

[Act XV,
1859, s. 14.]

18. (1) If, after the filing of the specification, the applicant has reason to believe that through mistake or inadvertence he has erroneously made any mis-statement in his application or specification, or included therein something which at the date of the delivery or receipt of his application was not new or whereof he was not the inventor, or that the specification is in any particular defective or insufficient, he may apply to the Governor General in Council for leave to file a memorandum pointing out the error, defect or insufficiency, and disclaiming any part of the alleged invention, or, in case of any defect or insufficiency of the specification, asking for leave to file an amended specification.

(2) The application must be in writing signed by the applicant, and must state how the error, defect or insufficiency occurred and that it was not fraudulently intended.

(3) Upon the application the Governor General in Council may make an order allowing the memorandum or amended specification to be filed.

(4) The provisions of sections 11, 12 and 14 with respect to specifications shall be applicable to the applications, orders, memoranda and amended specifications referred to in this section.

[Act XV,
1859, s. 14.]

19. An amended specification filed under the last foregoing section shall, except as to any suit or proceeding relating to the exclusive privilege which may be pending at the time of the filing of the amended specification, have the same effect as if it had been the specification first filed:

Provided that nothing in an amended specification shall be construed to extend or enlarge an exclusive privilege before acquired.

[Act XV,
1859, s. 15.]

20. A person shall not be entitled to an exclusive privilege under this Part—

- (a) if the invention is of no utility, or
- (b) if the invention, at the date of the delivery or receipt of the application for leave to file the specification, was not a new invention within the meaning of this Part, or
- (c) if the applicant is not the inventor thereof, or
- (d) if the specification filed or the amended specification, if any, does not particularly describe and ascertain the nature of the invention and in what manner it is to be performed, or

(e) if the original or any subsequent application relating to the invention or the original or any amended specification contains a wilful or fraudulent mis-statement.

21. An invention shall be deemed a new invention within the meaning of this Part if it has not, before the date of the delivery or receipt of the application for leave to file the specification, been publicly used in any part of British India or of the United Kingdom, or been made publicly known in any part of British India or of the United Kingdom by means of a written publication.

Novelty of invention dependent on public use or knowledge thereof before application to file specification.

22. The public use or knowledge of an invention before the date of the delivery or receipt of the application for leave to file a specification shall not be deemed a public use or knowledge within the meaning of this Part if the knowledge has been obtained surreptitiously or in fraud of the inventor or has been communicated to the public in fraud of the inventor or in breach of confidence:

Provided that the inventor has not acquiesced in the public use of his invention, and that, within six months after the commencement of that use, he applies for leave to file a specification.

23. The use of an invention in public by the inventor thereof, or by his servants or agents, or by any other person by his license in writing, for a period not exceeding one year immediately preceding the date of the delivery or receipt of his application for leave to file a specification, shall not be deemed a public use thereof within the meaning of this Part.

24. If an inventor who has obtained a patent for his invention in the United Kingdom causes an application for leave to file a specification of the invention under this Part to be delivered or received by the Secretary within twelve months from the date of the actual sealing of the patent, the invention shall be deemed a new invention within the meaning of this Part if it was not publicly used or known in any part of British India at or before the date of the application for the patent, notwithstanding that it may have been publicly used or known in some part of British India or of the United Kingdom before the date of the delivery or receipt of the application under this Part for leave to file the specification.

Effect of public use or knowledge of patented invention between application for patent and application to file specification.

[Act XV,
1859, s. 15.]

[Act XV,
1859, s. 15.]

*The Inventions and Designs Bill.**(Part I.—Inventions.—Sections 25-30.)*

W. of 46
Vic., c.
103
104.]

25. If an inventor applies for leave to file a specification under this Part while his application for a patent is pending in the United Kingdom, and the interval between the date of his application for the patent and the date of the delivery or receipt of his application under this Part does not exceed twelve months, the invention shall not be deemed to have been publicly used, or made publicly known, within the meaning of this Part, by reason only of the invention having been used, or a description thereof having been published, in any part of British India or of the United Kingdom during the interval.

& 47 Vic.,
7, s. 30.
Act XVI
1883.]

26. If an inventor, being the exhibitor of his invention at an industrial or international exhibition, certified as such by the Governor General in Council, causes an application for leave to file a specification of the invention to be delivered to or received by the Secretary within six months from the date of the admission of the invention into that exhibition, the invention shall not be deemed to have been publicly used, or made publicly known, within the meaning of this Part, by reason only of the invention having at any time after its admission into the exhibition been publicly used or made publicly known.

Act XV,
1859, s. 16.]

27. (1) An exclusive privilege acquired under this Part shall cease if the Governor General in Council declares the privilege, or the mode in which it is exercised, to be mischievous to the State, or generally prejudicial to the public.

(2) It shall also cease if a breach of any condition on which the applicant was authorised to file a specification, or on which the term of the exclusive privilege was extended, is proved to the satisfaction of a High Court, and if the Governor General in Council thereupon declares the privilege to have ceased.

Act XV,
1859, s. 20.]

28. An exclusive privilege acquired under this Part in respect of an invention for which a patent has been obtained in the United Kingdom shall cease if the patent for the invention is revoked.

Act XV,
1859, s. 22.]

29. (1) An inventor may institute a suit in the District Court against any person who, during the continuance of an exclusive privilege acquired by him under this Part in respect of an invention, makes, sells or uses the invention without his license, or counterfeits or imitates it.

Act XV,
1859, s. 23.]

(2) The suit shall not be defended upon the ground of any defect or insufficiency of the

specification of the invention, or upon the ground that the original or any subsequent application relating to the invention, or the original or any amended specification, contains a wilful or fraudulent mis-statement, or upon the ground that the invention is of no utility:

(3) Nor shall it be defended upon the ground that the plaintiff was not the inventor unless the defendant shows that he himself is the actual inventor or has obtained from the actual inventor a right to make, sell or use the invention, or to counterfeit or imitate it, as the case may be:

(4) Nor shall it be defended upon the ground that the invention was not new unless the defendant, or some person through whom he claims, has, before the date of the delivery or receipt of the application for leave to file the specification, publicly or actually used in some part of British India or of the United Kingdom the invention or that part of it with respect to which the exclusive privilege is alleged to have been infringed.

30. Any person may apply to a High Court [Act XV, 1859, s. 24.] for a rule to show cause why the Court should not declare that an exclusive privilege in respect of an invention to be specified in the rule has not been acquired under this Part by reason of all or any of the objections following (to be specified in the rule), that is to say:—

- (a) that the invention is of no utility, or
- (b) that the invention was not, at the date of the delivery or receipt of the application for leave to file the specification, a new invention within the meaning of this Part, or
- (c) that the applicant was not the inventor thereof, or
- (d) that the specification or the amended specification, if any, does not particularly describe and ascertain the nature of the invention, or in what manner it is to be performed, or
- (e) that the applicant has knowingly or fraudulently included in the application or specification or amended specification, as part of his invention, something which was not new or whereof he was not the inventor, or
- (f) that the original or any subsequent application relating to the invention, or the specification or amended specification, contains a wilful or fraudulent mis-statement, or
- (g) that some part of the invention, or the manner in which that part is to be performed, as described in the specification or amended specification, is not there-

*The Inventions and Designs Bill.**(Part I.—Inventions.—Sections 31-35.)*

by sufficiently described and ascertained, and that this insufficiency was fraudulent and is injurious to the public.

[Act XV,
1859, s. 25.]

31. Any person may apply to a High Court for a rule to show cause why the Court should not declare that an exclusive privilege in respect of any part of an invention to be specified in the rule has not been acquired under this Part, by reason of all or any of the objections following (to be specified in the rule), that is to say:—

- (a) that that part of the invention is wholly distinct from the other part thereof and is of no utility, or
- (b) that that part of the invention was not, at the date of the delivery or receipt of the application for leave to file the specification, a new invention within the meaning of this Part, or
- (c) that the applicant was not the inventor of that part of the invention, or
- (d) that that part of the invention, and the manner in which it is to be performed, are not sufficiently described and ascertained in the specification or the amended specification, if any, and that this insufficiency is injurious to the public.

[Act XV,
1859, s. 26.]

32. (1) Any person authorised by the Governor General in Council in this behalf may apply to a High Court for a rule to show cause why the question of the breach of any condition on which the leave to file a specification has been granted, or any other question of fact on which the cessation of an exclusive privilege under section 27 may, in the judgment of the Governor General in Council, depend, should not be tried in the form of an issue directed by the Court.

(2) If the rule is made absolute, the Court, unless the breach or other matter of fact is admitted, may direct the issue to be tried and certify the result of the trial to the Governor General in Council.

[Act XV,
1859, s. 27.]

33. (1) Notice of any rule obtained or proceeding taken under either of the last three foregoing sections shall be served on all persons appearing from the address-book to be proprietors of the exclusive privilege, or to have shares or interests therein, and it shall not be necessary to serve the notice on any other persons.

[Act XV,
1859, s. 35.]

(2) The notice shall be deemed to be sufficiently served if a copy thereof is left at the place for the time being stated in the address-book, by delivering the copy to any person resident at or in charge of the place, or, if there

is no person resident at or in charge of the place, or if the place is not within the local limits of the jurisdiction of the Court, by causing the notice to be sent to the place by post by a registered letter directed to the person to whom the notice is addressed.

34. (1) The High Court may, if it thinks fit, direct an issue for the trial, before itself or any other High Court, or any District Court, of any question of fact arising upon an application under section 30, section 31 or section 32, and the issue shall be tried accordingly.

(2) If the issue is directed to another Court, the finding shall be certified by that Court to the Court directing the issue.

(3) If the issue is directed to a District Court, the finding of that Court shall not be subject to appeal, but the evidence taken upon the trial shall be recorded, and a copy thereof, certified by the Judge of the Court, shall be transmitted, together with any remarks which he may think fit to make thereon, to the High Court, and the High Court may thereupon either act upon the finding of the District Court or direct a new trial as it thinks fit.

35. (1) If it appears to the High Court at the hearing of an application under section 30 or section 31 that, by reason of any of the objections specified in the rule, the exclusive privilege in the invention or in any part thereof has not been acquired, the Court shall make an order accordingly, and thereupon the applicant shall, so long as the order continues in force, cease to be entitled to the exclusive privilege.

(2) If it appears to the High Court, at the hearing of any such application as last aforesaid, that the applicant has, in the description of his invention in the application for leave to file the specification, or in the specification or amended specification, if any, included something which at the date of the delivery or receipt of the application for leave to file the specification was not new or whereof he was not the inventor, or that the specification is in any particular defective or insufficient, but that the error, defect or insufficiency was not fraudulently intended, the Court may adjudge the exclusive privilege to have been acquired and to be valid, save as to the part thereof affected by the error, defect or insufficiency: or

(3) If it appears to the High Court that the error, defect or insufficiency can be amended without injury to the public, the Court may adjudge the exclusive privilege in respect of the whole of the invention to be valid, and may, upon such terms as it thinks reasonable, order the specification to be amended in any particular in which it is erroneous, defective or insuffi-

*The Inventions and Designs Bill.**(Part I.—Inventions.—Sections 36-39.)*

cient, and thereupon the applicant shall, within a time to be limited by the Court for the purpose, file a specification amended according to the order:

Provided that nothing in the amended specification shall be construed to extend or enlarge the exclusive privilege before acquired.

Act XV, 1859, s. 31.] (4) An exclusive privilege in respect of an invention shall not be defeated upon the ground that the application for leave to file the specification of the invention contains a mis-statement, unless the mis-statement was wilful or fraudulent.

Act XV, 1859, s. 34.] 36. (1) In a suit for the infringement of an exclusive privilege acquired under this Part the plaintiff shall deliver with his plaint particulars of the breaches complained of in the suit, and the defendant shall deliver a written statement of the particulars of the grounds, if any, upon which he means to contend that the plaintiff is not entitled to an exclusive privilege in respect of the invention.

(2) In like manner, upon an application to a High Court under section 30, section 31 or section 32, the person making the application shall deliver particulars of the objections or grounds on which he means to rely.

(3) At the hearing of any such suit or application, or at the trial of any issue arising out of any such application, evidence shall not be allowed to be given in support of any alleged infringement or of any objection or ground impeaching the validity of the exclusive privilege which is not contained in the particulars delivered under this section.

(4) If it is alleged that the invention was publicly used or known before the date of the delivery or receipt of the application for leave to file the specification, the places where and the manner in which the invention was so publicly used or known shall be stated in the particulars.

(5) Notwithstanding anything in the foregoing portion of this section, the Court in which the suit or application is pending, or an issue arising out of the application is being tried, may allow the plaintiff or defendant respectively to amend the particulars delivered under this section upon such terms as it thinks fit.

Act XV, 1859, s. 33.] 37. If, in a suit instituted in the District Court within two years from the date of the delivery or receipt of an application for leave to file a specification, the actual inventor proves to the satisfaction of the Court that the applicant was not the actual inventor, and that at the time of the application for leave to file the specification he knew or had reason to believe that the knowledge of the

invention was obtained by himself or by some other person surreptitiously or in fraud of the actual inventor, or by means of a communication made in confidence by the actual inventor to him or to any person through whom he derived the knowledge, the Court may make a decree declaring an exclusive privilege in respect of the invention to be vested, subject to the other provisions of this Part, in the actual inventor for a term of fourteen years from the date of the filing of the specification, and requiring the applicant to account for and pay over to the actual inventor the profits derived by him from the invention.

38. A Court making a decree in a suit under section 29 or section 37, or an order on an application under section 30, section 31 or section 32, shall send a copy of the decree or order, as the case may be, to the Secretary, who shall cause an entry thereof to be made in the register of inventions and against any entry in the address-book affected thereby. [New.]

Registration of cessation of exclusive privilege. 39. In the following cases, namely— [Act XV, 1859, s. 32.]

- (a) when an exclusive privilege acquired under this Part has ceased under section 8 by reason of a fee in respect of the continuance of the privilege not having been paid within the time limited by the fourth schedule for the payment thereof, and the period within which an order might have been made for enlarging the time for the making of the payment has expired;
- (b) when an exclusive privilege acquired under this Part has been declared by the Governor General in Council under section 27 to have ceased;
- (c) when an exclusive privilege acquired under this Part has ceased under section 28 by reason of the revocation of a patent;
- (d) when the whole or any part of an exclusive privilege acquired under this Part has ceased under section 35 in consequence of an order under that section;
- (e) when an exclusive privilege has been declared by a decree to have vested in an actual inventor under section 37;
- (f) when an exclusive privilege acquired under this Part has ceased by reason of the expiration of the term for which it was acquired;

the Secretary shall cause an entry with respect to the cessation or vesting of the exclusive privilege to be made in the register of inventions,

*The Inventions and Designs Bill.**(Part I.—Inventions.—Sections 40-46.—Part II.—Designs.—Section 47.)*

and a reference to that entry to be made in the margin of the entry of the specification in that register.

40. (1) If any person is aggrieved by an entry in the register of inventions or address-book, or by the omission of an entry therefrom, and a proceeding is not provided in the foregoing portion of this Part whereby the register or book may be rectified, he may apply to a High Court for an order for the rectification of the register or book, and the Court may make such order on the application as it thinks fit.

(2) A copy of the order shall be forwarded by the Court to the Secretary, who shall cause an entry thereof to be made in the register of inventions and against any entry in the address-book affected thereby.

(3) When the Secretary is a party to an application under this section, the costs of another party thereto shall not be adjudged to be payable by the Secretary.

41. A High Court to which an application has been made under section 30, section 31, section 32 or section 40 may stay proceedings on, or dismiss, the application if in its opinion the application would be disposed of more justly or conveniently by another High Court.

42. If on the petition of any person interested it is proved to the Governor General in Council that, by reason of an inventor who has acquired an exclusive privilege under this Part failing to grant licenses on reasonable terms,—

(a) the exclusive privilege is not being worked in British India, or

(b) the reasonable requirements of the public with respect to the invention cannot be supplied, or

(c) any person is prevented from working or using to the best advantage an invention of which he is possessed,

the Governor General in Council may order the inventor to grant, or may himself on behalf of the inventor grant, licenses on such terms as to the amount of royalties, security for payment, or otherwise, as the Governor General in Council, having regard to the nature of the invention and the circumstances of the case, may deem just.

43. If an applicant is absent from British India, an application for leave to file a specification, memorandum or amended specification may, instead of being signed by the applicant under

section 5, section 9 or section 18, as the case may be, be signed on behalf of the applicant by an agent in British India authorised by him in writing in that behalf.

44. (1) An application under this Part for leave to file a specification, memorandum or amended specification must be verified by the person making the application.

(2) If that person is absent from British India, the application may be verified by the agent who signs the application on his behalf.

(3) The verification must be signed by the person making it, and must be to the effect that the facts stated in the application are true to his knowledge, except as to matters stated on information and belief, and that as to those matters he believes them to be true.

45. (1) There shall be paid in respect of the several proceedings specified in the fourth schedule the fees in that schedule prescribed.

(2) The Governor General in Council may, if he thinks fit, reduce any of those fees and revoke or vary the reduction.

(3) The fees payable under this section shall be collected by means of stamps or otherwise as the Governor General in Council directs.

(4) A proceeding in respect of which a fee is payable under the fourth schedule shall be of no effect unless the fee has been paid.

46. (1) The Governor General in Council may make such rules and prescribe such forms as he thinks necessary for carrying out the purposes of this Part, and may alter or amend either of the forms in the second and third schedules.

(2) Rules under this section may provide, among other matters, for the printing of specifications, memoranda and amended specifications, and for the distribution or sale of printed copies thereof.

PART II.

DESIGNS.

47. In this Part, unless there is something repugnant in the subject or context,—

(1) "design" means some peculiar shape, configuration or form given to an article, or arrangement of lines or the like used on or with an article, but not the article itself.

(2) "copyright" means the exclusive right to apply a design to an article.

(3) the author of any new and original design shall be considered the "proprietor" thereof.

*The Inventions and Designs Bill.**(Part II.—Designs.—Sections 48-56.)*

unless he executed the work on behalf of another person for a good or valuable consideration, in which case that person shall be considered the "proprietor," and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to an article, either exclusively of any other person or otherwise, and also every person on whom the property in the design or the right to the application thereof shall devolve, shall be considered the "proprietor" of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise :

(4) "Secretary," "District Court" and "High Court" have the same meanings as in Part I.

[46 & 47 Vic., c. 57, s. 47.] 48. (1) Any person claiming to be the proprietor of any new and original design not previously published in British India may apply to the Governor General in Council for an order for the registration of the design.

(2) The application must contain a statement of the nature of the design, and be accompanied by not fewer than three copies of drawings, photographs or tracings of the design, and must be left with, or sent by post to, the Secretary.

(3) The date of the delivery or receipt of the application in the office of the Secretary shall be endorsed thereon and recorded in that office.

[Act XV, 1859, s. 2.] 49. (1) Upon the application the Governor General in Council may, after such inquiry as he thinks fit, make an order authorizing the registration of the design.

(2) When an order has been made under sub-section (1), the Secretary shall cause the design to be registered in a book to be kept by him for the purpose and to be called the register of designs.

(3) The date of registration shall be recorded in the register.

[46 & 47 Vic., c. 57, s. 50, and Act XIII, 1872, s. 3.] 50. When a design is registered, the proprietor of the design shall, subject to the other provisions of this Part, have copyright in the design during five years from the date of registration.

[46 & 47 Vic., c. 57, s. 51.] 51. (1) Before delivery on sale of any article to which a registered design has been applied, the proprietor of the design shall cause the article to be marked with the word "registered" either in full or in an abbreviated form.

(2) If he fails to cause the article to be so marked, the copyright in the design shall cease unless the proprietor shows that he took all

proper steps to ensure the marking of the article.

52. If the proprietor of a design exhibited at an industrial or international exhibition, certified as such by the Governor General in Council, causes an application for an order for the registration of the design to be delivered to or received by the Secretary within six months from the date of the admission of the design into that exhibition, the design shall not be deemed not to be new or original within the meaning of section 48 by reason only of the design having been exhibited at the exhibition.

53. (1) The proprietor of a registered design may institute a suit in the District Court for the recovery of any damages arising from the application of the design, or of any fraudulent or obvious imitation thereof, for the purpose of sale by any person to any article, or from the publication, sale or exposure for sale by any person of any article to which the design, or any fraudulent or obvious imitation thereof, has been applied, that person knowing or having reason to believe that the proprietor had not given his consent to such application.

(2) When the Court makes a decree in a suit under this section, it shall send a copy of the decree to the Secretary, who shall cause an entry thereof to be made in the register of designs.

54. Any person in whom the copyright in a design, or any share or interest therein, has become vested may apply to the Secretary for the entry of his name in the register of designs as proprietor of the copyright, or of a share or interest therein, and the Secretary may, if he sees fit, cause the entry to be made.

55. (1) When, from the expiration of the term of a copyright or from any other cause, the copyright in a design has ceased, the Secretary shall cause an entry with respect to the cessation of the right to be made in the register of designs. [New.]

56. (1) A High Court may, on the application of any person aggrieved by an entry in the register of designs, or by the omission of an entry therefrom, make such order for the rectification of the register as it thinks fit.

(2) An order under sub-section (1) may declare copyright in a design not to have been acquired.

(3) A copy of the order shall be forwarded by the Court to the Secretary, who shall cause

The Inventions and Designs Bill.

(Part II.—Designs.—Sections 57-60.—The First Schedule.—Enactments repealed.
The Second Schedule.—Application where Patent has not been obtained.—The
Third Schedule.—Application where Patent has been obtained.)

an entry thereof to be made in the register of designs.

(4) When the Secretary is a party to an application under this section, the costs of another party thereto shall not be adjudged to be payable by the Secretary.

Act X, 1865, 241.] 57. A High Court to which an application has been made under the last foregoing section may stay proceedings on, or dismiss the application if, in its opinion, the application would be disposed of more justly or conveniently by another High Court.

6 & 47 Vic., 57, s. 52.] 58. An entry in the register of designs shall, for the purposes of the law of evidence for the time being in force, be deemed to be a public document, and the register or a copy thereof shall be open to the inspection of any person at all reasonable times.

6 & 47 Vic., 57, s. 56.] 59. (r) There shall be paid in respect of the several proceedings specified in the fifth schedule the fees in that schedule prescribed.

(2) The Governor General in Council may, if he thinks fit, reduce any of those fees and revoke or vary the reduction.

(3) The fees payable under this section shall be collected by means of stamps or otherwise as the Governor General in Council may direct.

(4) A proceeding in respect of which a fee is payable under the fifth schedule shall be of no effect unless the fee has been paid.

6 & 47 Vic., 57, s. 112.] 60. The Governor General in Council may make such rules and prescribe such forms as he thinks necessary for carrying out the purposes of this Part.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

| Number and year. | Subject or title. | Extent of repeal. |
|------------------|---|-----------------------------------|
| XV of 1859 | For granting exclusive Privileges to Inventors. | So much as has not been repealed. |
| XIII of 1872 | Patterns and Designs Protection Act, 1872. | So much as has not been repealed. |
| XVI of 1883 | Protection of Inventions Act, 1883. | The whole. |
| I of 1879 | Indian Stamp Act, 1872. | Article 48, Schedule I. |

THE SECOND SCHEDULE.

APPLICATION WHERE PATENT HAS NOT BEEN OBTAINED.

(See sections 5 and 46.)

TO THE GOVERNOR GENERAL IN COUNCIL.

The application of (*here insert name, occupation and address*) for leave to file a specification under Part I of the Inventions and Designs Act, 1887.

1. The applicant is in possession of an invention for (*state the title of the invention*) which invention he believes will be of public utility; he is the inventor thereof (*or, as the case may be, the executor, administrator or assign of the inventor*); and the invention is not publicly used or known in any part of British India or of the United Kingdom to the best of his knowledge and belief.

2. The following is a description of the invention (*here describe it*).

3. The applicant therefore prays for leave to file a specification of the invention pursuant to Part I of the Inventions and Designs Act, 1887.

(Signature and verification.)

THE THIRD SCHEDULE.

APPLICATION WHERE PATENT HAS BEEN OBTAINED.

(See sections 5 and 46.)

TO THE GOVERNOR GENERAL IN COUNCIL.

The application of (*here insert name, occupation and address*) for leave to file a specification under Part I of the Inventions and Designs Act, 1887.

1. The applicant (*or, as the case may be, A. B. of whom the applicant is the executor, administrator or assign*) has obtained a patent in the United Kingdom dated and sealed as of the day of , and actually sealed on the day of , for (*state the title of the invention*).

2. The applicant believes that the invention was not publicly used or known in any part of British India at or before the date of the application for the patent.

3. The following is a description of the invention (*here describe it*).

4. The applicant therefore applies for leave to file a specification of the invention pursuant to Part I of the Inventions and Designs Act, 1887.

(Signature and verification.)

*The Inventions and Designs Bill.**(The Fourth Schedule.—Fees (Inventions).)**(The Fifth Schedule.—Fees (Designs).)*

THE FOURTH SCHEDULE.

FEES (Inventions).

(See sections 8, 15, 39 and 45.)

| | Rs. a. p. |
|--|-----------|
| (1) in respect of an application for leave to file a specification (section 5) | 10 0 0 |
| (2) in respect of the filing of a specification (section 8) | 30 0 0 |
| (3) in respect of an extension of the time for filing a specification (section 8) | 20 0 0 |
| (4) in respect of the continuance of an exclusive privilege (section 8)— | |
| (a) after the filing of the specification and before the expiration of the second year from the date of the filing thereof | 75 0 0 |
| (b) after the expiration of the second year and before the expiration of the fourth year from that date | 75 0 0 |
| (c) after the expiration of the fourth year and before the expiration of the sixth year from that date | 100 0 0 |
| (d) after the expiration of the sixth year and before the expiration of the eighth year from that date | 100 0 0 |
| (e) after the expiration of the eighth year and before the expiration of the tenth year from that date | 150 0 0 |
| Provided that the inventor may pay the sum total of the said fees in respect of the continuance of the exclusive privilege, or any part thereof short of the sum total, at any time before the same falls due. | |
| (5) in respect of an enlargement of the time for payment of a fee under article (4) of this schedule (section 8)— | |
| (i) if the enlargement does not exceed one month | 10 0 0 |
| (ii) if the enlargement exceeds one month, but does not exceed two months | 25 0 0 |
| (iii) if the enlargement exceeds two months | 50 0 0 |
| (6) in respect of an application for an extension of an exclusive privilege for a further term (section 15) | 50 0 0 |

| | |
|---|------------------------------|
| (7) in respect of an order extending the term of an exclusive privilege (section 15) | 200 0 0 |
| (8) in respect of an application for leave to file a memorandum or amended specification (section 18) | 20 0 0 |
| (9) in respect of a petition to the Governor General in Council for a compulsory license (section 42) | 50 0 0 |
| (10) for the inspection of any book or other document which is open to inspection under Part I | 1 0 0 |
| (11) for copies— | |
| (a) when the number of words copied does not exceed four hundred | 1 0 0 |
| (b) for every hundred words in excess of four hundred | 0 4 0 |
| (c) of drawings | cost according to agreement. |
| (12) for certifying copies— | |
| for every hundred words | 2 0 |

THE FIFTH SCHEDULE.

FEES (Designs).

(See section 59.)

| | Rs. a. p. |
|--|------------------------------|
| (1) in respect of an application for an order for the registration of a design (section 48) | 10 0 0 |
| (2) in respect of a mutation of names in the register of designs (section 54) | 5 0 0 |
| (3) for the inspection of any book or other document which is open to inspection under Part II | 1 0 0 |
| (4) for copies— | |
| (a) when the number of words copied does not exceed four hundred | 1 0 0 |
| (b) for every hundred words in excess of four hundred | 0 4 0 |
| (c) of drawings | cost according to agreement. |
| (5) for certifying copies— | |
| for every hundred words | 0 2 0 |

STATEMENT OF OBJECTS AND REASONS.

THE Act for granting exclusive Privileges to Inventors in India, No. XV of 1859, was framed by Sir Barnes Peacock and Sir James Colville, who, when the question of providing protection for inventors came under consideration in the years 1856-59, had to create both a substantive law and a law of procedure. Instead of following the English law, they took a different course. As regards the substantive law, while following for the most part the main lines of the English law, they did not hesitate to introduce important variations where they thought it desirable to do so. As regards the procedure for obtaining an exclusive privilege, it was altogether different from the English procedure. On petition and leave given to file a specification, and on the specification being filed within the prescribed period, the exclusive privilege sprang into existence by mere operation of law, provided, of course, that the claim was well founded in substance—a matter of which the claimant, as in England, took the risk. The procedure was thus of the simplest description.

During the period, exceeding a quarter of a century, for which the Act of 1859 has been in operation, it has worked on the whole satisfactorily. Difficulties have, however, from time to time arisen, and the increasing resort to the Act has of late brought them into greater prominence; and though these difficulties are not of such a kind as to require, in

the opinion of the Government of India, any alteration which would affect the main principles of the Act, still their removal is very desirable. It has been decided, therefore, after communication with the Secretary of State and the Board of Trade, to introduce this Bill and to incorporate in it certain provisions suggested by the Patents, Designs and Trade Marks Act, 1883 (46 & 47 Vic., c. 57, as amended by 48 & 49 Vic., c. 63).

2. The following are the provisions of the Bill which seem to call for remark:—

- (1) *Section 3.*—The Bill is divided into two Parts, the one relating to Inventions and the other to Designs. The former Part reproduces the Act of 1859 with certain modifications: the latter Part is an adaptation of the essential provisions of Part III of the English Act of 1883.
- (2) *Section 4, clause (8).*—The constitution of an Inventions Office under the superintendence of the Secretary to the Government of India in the Revenue and Agricultural Department, and the transfer to him of the functions exercised under Act XV of 1859 by the Secretary to the Government of India in the Home Department, have been under the consideration of the Government.
- (3) *Section 4, clause (10).*—It is proposed to confer the jurisdiction of a High Court under the Bill on the High Courts at Fort William, Madras, Bombay and Allahabad, the Chief Court of the Panjáb and the Recorder of Rangoon.
- (4) *Section 5, sub-section (3).*—The petition for leave to file a specification of an invention, presented under section 1 of the Act of 1859, not infrequently furnishes only a vague description of the invention which it is sought to protect, and, when a fuller and clearer description is called for, it is at times only supplied under protest. If such particulars as section 5, sub-section (3), of the Bill is intended to enable the Governor General in Council to call for are not forthcoming, the purposes of section 3 of the Act respecting references to experts may be defeated. In authorising drawings to be called for, the Bill follows 46 & 47 Vic., c. 57, section 5, sub-section (3).
- (5) *Section 5, sub-section (4), and section 25.*—A question has recently arisen as to whether a person is precluded under the existing law from proceeding to acquire concurrently a patent under the English Act and an exclusive privilege under the Indian Act; and it has been held, on the advice of the Hon'ble the Advocate General of Bengal, that he is not so precluded provided he can truly state at the time of applying for leave to file his specification in India that his invention is not publicly used or known in the United Kingdom. It is proposed therefore to provide in the Bill, on the analogy of the provisions of sections 103 and 104 of the English Act, that if an inventor applies for leave to file a specification in India within one year from the date of his application for a patent in England, his invention shall not be deemed to have been publicly used or made publicly known within the meaning of the Indian Act by reason only of the invention having been used, or a description thereof having been published, in any part of India or of the United Kingdom during the interval between his application for the patent and his application for leave to file the specification.
- (6) *Section 6.*—It is proposed by this section to make it clear that the nature and extent of the enquiry into the merits of an application are matters in the discretion of the Governor General in Council. Successive Advocates General have advised that the existing law imposes upon the Government the duty of making enquiry to an extent which must at times seriously delay the progress of an application without producing any commensurate advantage.
It is proposed to leave to the Government, instead of to the High Court, the settlement of the fee to be paid to an expert to whom an application is referred for inquiry and report.
- (7) *Section 7.*—This section provides for the case of concurrent applications in respect of contemporaneous inventions, and follows generally the rule obtaining in England (*In re Dering*, 13 Ch. D. 393).
- (8) *Section 8, sub-section (1).*—Cases of hardship have occurred owing to there being no provision for extending the period of six months within which section 4 of the Act of 1859 requires a specification to be filed after an order authorising the filing of it has been made. It is proposed therefore, to empower the Governor General in Council, on cause shown to his satisfaction, to extend the period from six to nine months.
- (9) *Section 8, sub-sections (2), (3) and (4).*—These sub-sections follow section 17, sub-sections (2), (3) and (4), of the English Act of 1883, and are rendered necessary by the change to be presently noticed which it is proposed to make in the system of levying fees.
- (10) *Section 11.*—It does not seem necessary to have copies of specifications filed in the offices of the Secretaries to the Governments of Bengal and the North-Western Provinces. The office of the Secretaries to the Government of Bengal

is in Calcutta, where specifications are open to inspection at the office of the Home Department of the Government of India. As regards the North-Western Provinces, communication is much easier now than in 1859, and inconvenience has not, it is believed, been found to result from the law not requiring copies to be sent to and filed by the Secretary to the Government of the Panjáb.

- (11) *Section 15.*—This section is based on section 25 of the English Act, and empowers the Governor General in Council to refer to the High Court for report an application for an extension of the term of an exclusive privilege. Following the English Act, it also makes an extension of the term for so long a period as fourteen years permissible in exceptional cases only.
- (12) *Section 17.*—This section follows section 27 of the English Act in making an exclusive privilege have the same effect against the Crown as it has against a subject. But it authorises officers of the Crown to use the invention for the services of the Crown on terms to be before or after the use thereof agreed on with the approval of the Governor General in Council or, in default of agreement, on terms to be settled by the Governor General in Council.

As regards the attaching of conditions to an order authorising the filing of a specification by a public servant, it seems to be fair and just to adopt such reasonable precautions as will prevent him from using to the prejudice of the Government experience acquired in the course of his employment.

- (13) *Section 24.*—Under section 13 of the English Act of 1883, patents must be dated and sealed as of the day of the application, and under sections 8, 9 and 12 of that Act as amended by 48 & 49 Vic., c. 63, a period of nineteen months, or even a longer period, may elapse between the application for, and the sealing of, the patent. If, therefore, section 20 of the Indian Act of 1859, which limits to twelve months from the date of the patent the time for applying to the Governor General in Council for leave to file a specification of an invention patented in England, is literally construed, it may have the effect of precluding an inventor from securing an exclusive privilege in India. In order to avert the injustice or disappointment which may thus be the result of working section 20 of the Indian Act in connection with the English Act, it is proposed to permit the holder of a patent obtained in England to apply to the Governor General in Council within twelve months from the date on which the patent was actually sealed. The date of actual sealing stated in the application can be verified by reference to the Official Journal of the Patent Office.
- (14) *Section 26.*—This section covers the Protection of Inventions Act, XVI of 1883, which is scheduled for repeal. But it is proposed to protect inventions not from the date of the opening of an exhibition but from the date of their admission into the exhibition. The English Act is about to be amended in this respect.
- (15) *Section 28.*—It is proposed, on the advice of the Board of Trade, to abolish the rule of section 20 of the Act of 1859, that, where a patent for an invention has been obtained in the United Kingdom, an exclusive privilege in respect of the invention in India is not to extend beyond the term granted by the patent.
- (16) *Section 42.*—This section reproduces the substance of section 22 of the English Act, and provides for the grant of compulsory licenses where an inventor who has acquired an exclusive privilege does not make his invention accessible.
- (17) *Section 45.*—This section and the fourth schedule are based on section 24 and the second schedule of the English Act, and on the first schedule to the Patent Rules, 1883, made by the Board of Trade under the Act. Light fees are proposed to be levied in respect of applications for leave to file specifications and in respect of the filing of specifications, and increasingly heavy fees periodically in respect of the continuance of an exclusive privilege. Under section 8 of the Bill an exclusive privilege will cease if any fee in respect of its continuance is not paid within the time limited for the payment.
- (18) Part II of the Bill, relating to Designs, is, as already stated, a mere adaptation of Part III of the English Act of 1883. It extends from three to five years the period during which copyright in a design is to continue.

The 7th January, 1887.

ANDREW R. SCOBLE.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

The following Report of the Select Committee on the Bill to amend the Indian Companies Act, 1882, was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 7th January, 1887 :—

WE, the undersigned, Members of the Select Committee to which the Bill to amend

the Indian Companies Act, 1882, was referred, have considered the Bill and the papers noted on the margin, and have now the honour to submit this our Report.

From Secretary to Chief Commissioner, Assam, No. 1657, dated 14th August, 1886 [Paper No. 1].
 From Registrar, High Court, Calcutta, No. 2097, dated 25th August, 1886 [Paper No. 2].
 From Secretary for Berar to Resident, Hyderabad, No. 290 G., dated 25th August, 1886 [Paper No. 3].
 From Under Secretary to Chief Commissioner, Central Provinces, No. 3980—233, dated 31st August, 1886 [Paper No. 4].
 From Secretary to Chief Commissioner, Burma, No. 810—22 L., dated 31st August, 1886 [Paper No. 5].
 From Chief Commissioner, Ajmere-Merwara, No. 1055—690-II, dated 14th September, 1886 [Paper No. 6].
 From Secretary to Chief Commissioner, Coorg, No. 1670—3256, dated 14th September, 1886 [Paper No. 7].
 From Chief Secretary to Government, Madras, No. 2546, dated 23rd September, 1886, and enclosures [Papers No. 8].
 From Secretary to Government, North-Western Provinces and Oudh, No. 767—VII—328-10, dated 2nd October, 1886 [Paper No. 9].
 From Acting Under Secretary to Government, Bombay, No. 5813, dated 11th October, 1886, and enclosures [Papers No. 10].
 Endorsement by Acting Chief Secretary to Government, Madras, No. 2863, dated 23rd October, 1886, and enclosures [Papers No. 11].
 From Chief Secretary to Government, Bengal, No. 3322], dated 19th November, 1886, and enclosures [Papers No. 12].

terms to fiscal debts due from a bankrupt to the Crown, we deem it desirable to give priority in similar terms to like debts due to the Crown from a Company which is being wound up. This saving may not be absolutely necessary in the case of debts due to the Crown (L. R. 9 Ch. D. 469 and 5 Bom. H. C. R. 23) ; but it is proposed, as in the Bankruptcy Bill, to give to rates and taxes payable to local authorities the same priority as to Crown debts, and in the case of some at least of those rates and taxes an express declaration of their priority will be necessary.

3. The salaries of clerks and servants being paid monthly in this country, we consider it will be sufficient to give priority to those salaries for the same time, namely, two months, as priority is given to wages of labourers and workmen by the Companies Act, 1883 (46 & 47 Vic., c. 28). But we agree with the Bengal Chamber of Commerce, the Calcutta Trades Association and other authorities that in this country it is proper to give priority to the salary of a clerk or servant for a larger sum than in England, and we have proposed to raise to Rs. 1,000 the limit up to which the salary of a clerk or servant is to have priority.

As regards the priority to be given to the wages of labourers and workmen, we propose to follow the Companies Act, 1883, in limiting it to wages in respect of services rendered during the two months before the commencement of the winding up.

4. The publication ordered by the Council has been made as follows :—

In English.

| <i>Gazette.</i> | <i>Date.</i> |
|---|---|
| Gazette of India | 7th, 14th and 31st July, 1886. |
| Fort Saint George Gazette | 6th August, 1886. |
| Bombay Government Gazette | 22nd July, 1886. |
| Calcutta Gazette | 28th July, and 4th and 11th August, 1886. |
| North-Western Provinces and Oudh Government Gazette | 24th and 31st July, and 7th August, 1886. |
| Punjab Government Gazette | 22nd and 29th July, and 5th August, 1886. |
| Central Provinces Gazette | 24th and 31st July, and 7th August, 1886. |
| Burma Gazette | 7th, 14th and 21st August, 1886. |
| Assam Gazette | 7th, 14th and 28th August, 1886. |
| Coorg District Gazette | 1st September, 1886. |

In the Vernaculars.

| <i>Province.</i> | <i>Language.</i> | <i>Date.</i> |
|--|---------------------|--|
| Bombay | Maráthi | 19th August, 1886. |
| | Gujaráthi | 19th August, 1886. |
| Bengal | Bengali | 24th and 31st August, 1886. |
| | Hindi | 2nd, 14th, 21st and 28th September, 1886. |
| | Uriya | 2nd, 14th, 21st and 28th September, 1886. |
| North-Western Provinces and Oudh | Urdu | 21st and 28th August, and 4th September, 1886. |
| Central Provinces | Maráthi | 1st, 8th and 15th September, 1886. |
| Burma | Burmese | 4th, 11th and 18th September, 1886. |

5. We are of opinion that the Bill should be re-published, and that it should not be further proceeded with till the expiration of one month from the date of the presentation of this Report.

ANDREW R. SCOBLE.

J. B. PEILE.

W. W. HUNTER.

The 7th January, 1887.

No. II.

A Bill to amend the Indian Companies Act, 1882.

VI of 1882. WHEREAS it is expedient to amend the Indian Companies Act, 1882, in manner hereinafter appearing; It is hereby enacted as follows:—

VI of 1882. I. After section 200 of the Indian Companies Act, 1882, the following section shall be inserted, namely:—

Insertion of new section after section 200.

[46 & 47 Vic., c. 28, s. 4.] "200A. (1) In the distribution of the assets of any company being wound up under this Act, there shall be paid in priority to all other debts—

[Indian Bankruptcy Bill, s. 33, sub-section (1), cls. (a), (b) and (c): 55 Law J. Rep. Q. B. 288.] "(a) all revenue, taxes, cesses and rates, whether payable to Her Majesty or to a local authority, due from the company at the date of the commencement of the winding-up, and having become due and payable within the twelve months next before that date;

"(b) all wages or salary of any clerk or servant in respect of services rendered to

the company within the two months next before the commencement of the winding-up, not exceeding one thousand rupees for each clerk or servant; and

"(c) all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piece-work, in respect of services rendered to the company within the two months next before the commencement of the winding-up.

"(2) The foregoing debts shall rank equally among themselves, and shall be paid in full, unless the assets of the company are insufficient to meet them, in which case they shall abate in equal proportions among themselves.

"(3) Subject to the retention of such sums as [46 & 47 c. 28, s. 4.] may be necessary for the cost of administration or otherwise, the liquidator or official liquidator shall discharge the foregoing debts forthwith, so far as the assets of the company are and will be sufficient to meet them, as and when the assets come into the hands of the liquidator or official liquidator."

S. HARVEY JAMES,

Offg. Secretary to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 15, 1887.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V. .

Bills introduced into the Council of His Excellency the Governor General for making Laws and Regulations or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 14th January, 1887 :—

No. 3 of 1887.

THE INDIAN MARINE BILL, 1887.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Title and commencement.
2. Definitions.
3. Procedure on enrolment.
4. General power to make rules.

CHAPTER II.

OFFENCES AND PUNISHMENTS.

Neglect of Duty.

5. Neglect of duty.

Mutiny.

6. Mutiny accompanied by violence.
7. Mutiny not accompanied by violence.

SECTIONS.

8. Inciting to mutiny.
9. Mutinous assembly or uttering seditious words.
10. Concealing traitorous or mutinous practice, design or words.
11. Striking or using violence to superior officer.

Insubordination.

12. Disobedience or using threatening language to superior officer.

Desertion and Absence without Leave.

13. Desertion.
14. Inducing any person to desert.
15. Breaking out of ship.
16. Absence without leave.

Miscellaneous Offences.

17. Drunkenness and uncleanness.
18. Cruelty or oppression by gazetted officer.
19. Suffering vessel to be lost or imperilled.
20. Unlawful taking of goods on board.
21. Embezzling public stores.
22. Arson.
23. Making false documents.
24. Malingering, or misconduct in hospital.
25. Creating disturbance on account of complaints.
26. Offences to the prejudice of good order and discipline not otherwise specified.

Offences against Public Justice.

27. Not assisting in apprehending offenders.
28. Contempt of Court.
29. False evidence.

SECTIONS.

Offences punishable by Ordinary Law.

30. Offences punishable by ordinary law.

Punishments.

31. Schedule of punishments.

32. Regulations as to the infliction of punishments.

33. Scale of punishments.

34. Limitation of time for trials.

CHAPTER III.

JURISDICTION AND POWERS.

35. Offences cognizable by Criminal Courts and Indian Marine Courts respectively.

36. Power to pass sentences.

37. Jurisdiction and powers of commanding officers.

38. Cases in which Criminal Courts and Indian Marine Courts have concurrent jurisdiction.

39. Place of trial.

40. Jurisdiction over person ceasing to be subject to Act.

41. Case of person charged under ordinary law.

42. Previous conviction or acquittal.

43. Application of Act XV of 1869 to Indian Marine Courts.

44. Powers of Governor General in Council in respect of sentences.

CHAPTER IV.

INDIAN MARINE COURTS.

Constitution of the Court.

45. Power to convene Indian Marine Court.

46. Composition of Indian Marine Court.

Procedure at the Trial.

47. Place of sitting of Indian Marine Court.

48. Challenge.

49. Oaths.

50. Trial of officers and crew by one Court.

51. Dissolution of Court on illness of prisoner.

52. Re-trial of prisoner in certain cases.

53. Clearing Court.

54. Decision of Court.

55. Summoning witnesses.

56. Summary punishment of certain contempts.

Confirmation of Findings and Sentences.

57. Confirmation of findings and sentences.

SECTIONS.

Evidence.

58. Law of evidence applicable.

Preservation of Proceedings.

59. Preservation of Indian Marine Court proceedings and grant of copies.

Power to make Rules respecting Procedure.

60. Power to make rules respecting procedure.

CHAPTER V.

SUPPLEMENTAL CRIMINAL PROVISIONS.

Procedure of Criminal Courts beyond British India.

61. Procedure of Criminal Courts beyond British India.

Arrest.

62. Arrest of offenders.

63. Power of commanding officer.

64. Arrest through civil power.

Execution of Sentences of Indian Marine Courts and Commanding Officers.

65. Commencement of sentences of imprisonment.

66. Execution of such sentences.

Savings.

67. Saving of authority of ordinary Courts.

68. Saving of rules of service.

Amendment of Acts.

69. Amendment of Act X of 1882, section 54 (Arrest of Deserters).

70. Amendment of Chapter VII of the Penal Code (Offences relating to the Army and Navy).

CHAPTER VI.

PROVISIONS OF CIVIL LAW.

Exemption from Process.

71. Exemption from arrest for debt.

72. Property which cannot be attached.

Property of Deceased Persons and Deserters.

73. Disposal of property of deceased persons and deserters.

*The Indian Marine Bill, 1887.**(Chapter I.—Preliminary.—Sections 1-2.)**A Bill for the better administration of Her Majesty's Indian Marine Service.*47 & 48
Vic., c. 38.24 & 25
Vic., c. 87.

WHEREAS by the Indian Marine Service Act, 1884, it is, among other things, enacted that the Governor General in Council shall have power, subject to the provisions contained in the Indian Councils Act, 1861, as amended by subsequent Acts, at meetings for the purpose of making Laws and Regulations, to make laws for all persons employed or serving in, or belonging to, Her Majesty's Indian Marine Service:

Provided that—

- (a) a law made under that power shall not apply to any offence unless the vessel to which the offender belongs is at the time of the commission of the offence within the limits of Indian waters as defined by the said Indian Marine Service Act; and
- (b) the punishments imposed by any such law for offences shall be similar in character to, and shall not be in excess of, the punishments which may at the time of making the law be imposed for similar offences under the Acts relating to Her Majesty's Navy, except that in the case of persons other than Europeans or Americans imprisonment for any term, not exceeding fourteen years, or transportation for life or any less term, may be substituted for penal servitude;

And whereas it is further provided by the said Indian Marine Service Act that subject to the provisions of that Act a law made thereunder shall be of the same force and effect as an Act of Parliament;

And whereas in pursuance of the power thus conferred and of all other powers vested in the Governor General in Council in this behalf it is expedient to make such laws as are mentioned in the said Indian Marine Service Act and to make provision in other particulars for the proper regulation of, and otherwise in relation to, Her Majesty's Indian Marine Service;

And whereas the Secretary of State for India in Council has given his previous approval to the passing of this Act;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title and commence-
ment.

1. (1) This Act may be called the Indian Marine Act, 1887; and

(2) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, fix in this behalf.

2. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(1) "person subject to this Act" means a person who is employed or serves in, or belongs to, Her Majesty's Indian Marine Service, and who, if he is not a gazetted officer, has been enrolled in that service in the manner provided by this Act: [47 & 48 c. 38, s. 2]

(2) "gazetted officer" means a person who by virtue of his letter of appointment is holding a position in the Indian Marine Service as—

| | |
|-----------------------|------------------------|
| Commander, | Chief engineer, |
| First grade officer, | Engineer, |
| Second grade officer, | Assistant engineer, or |
| Third grade officer, | Clerk: |

(3) "warrant officer" means a person who by virtue of his appointment is holding a position in the Indian Marine Service as—

| | |
|-----------------------|-----------------------------|
| Gunner, | Engine-driver, first class, |
| Apothecary, | Carpenter, |
| Assistant apothecary, | Hospital assistant, or |
| Assistant clerk, | General mess steward: |

(4) "petty officer" means a person who by virtue of his appointment is holding a position in the Indian Marine Service as—

| | |
|--|--|
| Chief syrang, first class, | Tindal of lascars, first class, |
| Chief syrang, second class, | Tindal of lascars, second class, |
| Ship's steward, | Tindal of stokers, first class, |
| Engine-driver, second class, | Tindal of stokers, second class, |
| Cook on a salary of not less than fifty rupees per mensem, | Cassaub, first class, |
| General mess butler, | Cassaub, second class, or |
| Syrang of lascars, first class, | Cook on a salary of less than fifty rupees per mensem: |
| Syrang of lascars, second class, | |

(5) "superior officer," used with reference to an officer of a rank mentioned in clause (2), clause (3) or clause (4) of this section, means an officer of a rank mentioned before his in any of those clauses; and, used with reference to any other person subject to this Act, means an officer mentioned in any of those clauses:

(6) "commanding officer" means the officer in command of a vessel, whether by special appointment or by the rules or customs of the service, and includes, as respects any persons subject to this Act who are employed otherwise than on board the vessel to which they belong, such officer (if any) as the Governor General in Council appoints, instead of the commanding officer of that vessel, to discharge the functions of commanding officer in regard to those persons:

(7) "Indian Marine Court" means an Indian Marine Court held under this Act:

(8) "Criminal Court" means a Court having ordinary criminal jurisdiction in British India or

The Indian Marine Bill, 1887.

(Chapter I.—Preliminary.—Sections 3-4.—Chapter II.—Offences and Punishments.—Sections 5-13.)

(Chapter II.—Offences and Punishments.—Sections 7-13.)

such a Court established elsewhere by the authority of the Governor General in Council:

(9) "prescribed" means prescribed by rules made by the Governor General in Council.

3. A person to be enrolled in the Indian Marine Service shall be brought on to the quarter-deck or other suitable place on boardship or on shore, and the commanding or other prescribed officer shall cause to be read and explained to him the prescribed portions of this Act, and of the rules and conditions of service; and if the officer is satisfied that the person understands those portions he will administer to him an oath or affirmation of allegiance in the prescribed form, and cause him to sign or, if he cannot write, to affix his mark to the prescribed roll.

4. In addition to any other rules which may be made under this Act, the Governor General in Council may, by notification in the Gazette of India, make rules consistent with this Act for the guidance of officers, whether military, Indian Marine, civil or political, in all matters connected with its enforcement.

CHAPTER II.

OFFENCES AND PUNISHMENTS.

Neglect of Duty.

5. A person subject to this Act who deserts his post or sleeps upon his watch, or negligently performs the duty imposed on him, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

Mutiny.

6. Where a mutiny is accompanied by violence, a person subject to this Act who joins therein shall suffer death or such other punishment as is hereinafter mentioned; and a person subject to this Act who does not use his utmost exertions to suppress the mutiny shall,—

- (a) if he has acted traitorously, suffer death or such other punishment as is hereinafter mentioned;
- (b) if he has acted from cowardice, suffer penal servitude or such other punishment as is hereinafter mentioned;
- (c) if he has acted from negligence, be dismissed with disgrace from the Indian Marine Service, or suffer such other punishment as is hereinafter mentioned.

7. Where a mutiny is not accompanied by violence, a ringleader thereof, being a person subject to this Act, shall suffer death or such other punishment as is hereinafter mentioned; and all other persons subject to this Act who join in the mutiny, or do not use their utmost exertions to suppress it, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

8. A person subject to this Act who endeavours to seduce any other person subject to this Act from his duty or allegiance to Her Majesty, or endeavours to incite him to commit any act of mutiny, shall suffer death or such other punishment as is hereinafter mentioned.

9. A person subject to this Act who makes or endeavours to make any mutinous assembly, or leads or incites any other person to join in any mutinous assembly, or utters any words of sedition or mutiny, shall suffer penal servitude or such other punishment as is hereinafter mentioned.

10. A person subject to this Act who wilfully conceals any traitorous or mutinous practice, design, or any traitorous or mutinous words spoken against Her Majesty, or any practice, design or words tending to the hindrance of the service, shall suffer penal servitude or such other punishment as is hereinafter mentioned.

11. A person subject to this Act who strikes or attempts to strike, or uses or attempts to use any violence against, his superior officer, being in the execution of his office, or otherwise, shall suffer penal servitude or such other punishment as is hereinafter mentioned.

Insubordination.

12. A person subject to this Act who wilfully disobeys any lawful command of his superior officer, or uses threatening or insulting language, or behaves with contempt, to his superior officer, shall be dismissed with disgrace from the Indian Marine Service, or suffer such other punishment as is hereinafter mentioned.

Desertion and Absence without Leave.

13. A person subject to this Act who—

- (1) absents himself from his ship or from the place where his duty requires him to be, with the intention of not returning to that ship or place; or

*The Indian Marine Bill, 1887.**(Chapter II.—Offences and Punishments.—Sections 14-25.)*

(2) at any time and under any circumstances, when absent from his ship or place of duty, does any act which shows that he has an intention of not returning to that ship or place;

shall be deemed to have deserted, and shall suffer penal servitude or such other punishment as is hereinafter mentioned;

and in every such case he shall forfeit all pay, bounty, salvage, prize-money and allowances that may have been earned by him, and all annuities, pensions, gratuities, medals and decorations that may have been granted to him, and also all clothes and effects which he may have left on board the ship or at the place from which he has deserted, unless it is otherwise directed by the Court by which he is tried or by the Governor General in Council.

30 Vic., 109, s. 20.] 14. A person subject to this Act who endeavours to seduce any other person subject to this Act to desert shall suffer imprisonment or such other punishment as is hereinafter mentioned.

30 Vic., 109, s. 22.] 15. A person subject to this Act who (without being guilty of desertion) improperly leaves his ship or place of duty shall suffer imprisonment or such other punishment as is hereinafter mentioned.

30 Vic., 109, s. 23.] 16. A person subject to this Act who (without being guilty of desertion or of improperly leaving his ship or place of duty) is absent without leave shall suffer imprisonment for any period not exceeding ten weeks or such other punishment as the circumstances of the case may require.

Miscellaneous Offences.

30 Vic., 109, s. 27.] 17. A person subject to this Act who is guilty of drunkenness and uncleanness shall be dismissed with disgrace from the Indian Marine Service, or suffer such other punishment as is hereinafter mentioned.

30 Vic., 109, s. 28.] 18. A gazetted officer subject to this Act who is guilty of cruelty, or of cruelty or oppression by gazetted officer, or of any scandalous or fraudulent conduct, or of any other conduct unbecoming the character of an officer, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

30 Vic., 109, s. 29.] 19. A person subject to this Act who designedly suffers a vessel to be lost or imperilled, or negligently, or by any default, loses, strands or hazards, or suffers to be lost, stranded or hazarded, any vessel of the Indian Marine Service shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

20. An officer in command of an Indian Marine Service vessel who receives on board, or permits to be received on board, the vessel any goods or merchandise whatsoever, other than for the sole use of the vessel, except gold, silver or jewels, and except goods and merchandise belonging to any merchant, or on board any vessel which may be shipwrecked or in imminent danger either on the high seas or in some port, creek or harbour, for the purpose of preserving them for their proper owners, or except such goods or merchandise as he may at any time be ordered to take or receive on board by order of the Government or his superior officer, shall be dismissed from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

21. A person subject to this Act who wastefully expends, embezzles or fraudulently buys, sells or receives any ammunition, provisions or other public stores, or who knowingly permits any such wasteful expenditure, embezzlement, purchase, sale or receipt, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

22. A person subject to this Act who unlawfully sets fire to any dock-yard, victualling yard, steam-factory yard, arsenal, magazine, building or stores, or to any ship, vessel, hoy, barge, boat or other craft, or furniture thereunto belonging, not being the property of an enemy, pirate or rebel, shall suffer penal servitude or such other punishment as is hereinafter mentioned.

23. A person subject to this Act who knowingly makes or signs a false muster or record or other official document, or who commands, counsels or procures the making or signing thereof, or who aids or abets any other person in the making or signing thereof, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

24. A person subject to this Act who wilfully does any act or wilfully disobeys any orders, whether in hospital or elsewhere, with intent to produce or to aggravate any disease or infirmity, or to delay his cure, or who feigns any disease, infirmity or inability to perform his duty, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

25. A person subject to this Act who has any cause of complaint, either on account of complaints, upon the ground of the unwholesomeness of the victuals or upon any other ground, shall quietly make the same known to his commanding officer, and that officer shall inquire into the complaint and shall, as far as he is able, cause the same to be presently remedied, or shall report the case to the Director of Marine; and any

*The Indian Marine Bill, 1887.**(Chapter II.—Offences and Punishments.—Sections 26-32.)*

person subject to this Act who, upon any pretence whatever, attempts to stir up any disturbance on any such ground shall suffer such punishment as the Court thinks fit to inflict according to the degree of the offence.

[29 & 30 Vic.,
c. 109, s. 43.]

26. A person subject to this Act who is guilty of any act, disorder or neglect to the prejudice of good order and discipline, not hereinbefore specified, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Offences against Public Justice.

[29 & 30 Vic.,
c. 109, s. 51.]

27. A person subject to this Act who does not use his utmost endeavours to detect, apprehend and bring to punishment all offenders against this Act, and does not assist the officers appointed for that purpose, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

[29 & 30 Vic.,
c. 109, s. 56.]

28. A person subject to this Act who, being duly summoned or ordered to attend as a witness before a Criminal Court or an Indian Marine Court or an officer exercising jurisdiction under this Act, refuses or neglects to attend to give his evidence upon oath or affirmation, or prevaricates in his evidence or behaves with contempt to the Court or officer, shall be punished with imprisonment which may extend to three months in the case of such refusal, neglect or prevarication, and to one month in the case of such contempt.

[29 & 30 Vic.,
c. 109, s. 57.]

29. A person subject to this Act who, when examined on oath or affirmation before a Criminal Court or an Indian Marine Court or an officer exercising jurisdiction under this Act, wilfully and corruptly gives false evidence, shall suffer penal servitude or imprisonment for a term which may extend to seven years.

Offences punishable by Ordinary Law.

[29 & 30 Vic.,
c. 109, s. 45.]

30. (1) A person subject to this Act who is guilty of murder shall suffer death.

(2) If he is guilty of manslaughter he shall suffer penal servitude or such other punishment as is hereinafter mentioned.

(3) If he is guilty of sodomy with man or beast he shall suffer penal servitude.

(4) If he is guilty of an indecent assault he shall suffer penal servitude or such other punishment as is hereinafter mentioned.

(5) If he is guilty of robbery or theft he shall suffer penal servitude or such other punishment as is hereinafter mentioned.

(6) If he is guilty of any other criminal offence which if committed in England would be punishable by the law of England he shall—

(a) be punished under this Act as for an act to the prejudice of good order and discipline not otherwise specified, or

(b) be subject to the same punishment as might for the time being be awarded by any ordinary criminal tribunal competent to try him if the offence had been committed in England.

Punishments.

Schedule of punishments.

31. (1) The following punishments may be inflicted under this Act:—

- (1) death;
- (2) penal servitude;
- (3) dismissal with disgrace from the Indian Marine Service;
- (4) imprisonment;
- (5) dismissal from the Indian Marine Service;
- (6) loss of seniority as an officer for a specified time or otherwise;
- (7) dismissal from the ship to which the offender belongs;
- (8) severe reprimand, or reprimand;
- (9) disrating a warrant or petty officer or any other person below that rank;
- (10) forfeiture of pay, bounty, salvage, prize-money and allowances earned by, and of all annuities, pensions, gratuities, medals and decorations granted to, the offender, or of any one or more of the above particulars; also, in the case of desertion, of all clothes and effects left by the deserter on board the ship to which he belongs.

(2) Each of the above punishments shall be deemed to be inferior in degree to every punishment preceding it in the above scale.

Regulations as to the infliction of punishments.

32. The following regulations shall apply to the infliction of punishments:—

(1) The punishment of penal servitude may, except when otherwise provided by this Act, be inflicted for the term of life or for any other term not less than four years.

(2) In the case of persons other than Europeans or Americans, transportation for life or for any less term, or imprisonment for any term not exceeding fourteen years, shall be substituted for penal servitude:

Provided that—

(a) the term of a sentence of transportation or imprisonment passed under section 29 in substitution for a sentence of penal servitude shall not exceed seven years; and

(b) the term of a sentence of transportation or imprisonment passed under section 30,

The Indian Marine Bill, 1887.

(Chapter II.—Offences and Punishments.—Sections 33-34.—Chapter III.—Jurisdiction and Powers.—Section 35.)

sub-section (6), clause (b), in substitution for a sentence of penal servitude shall not exceed the term of penal servitude awardable under the law of England.

30 Vic.,
s. 53. (3) The punishment of penal servitude or of transportation, or of imprisonment for more than two years when substituted for penal servitude under the provisions of this Act, shall in all cases involve dismissal from the Indian Marine Service, with or without disgrace, as the prescribed authority may direct.

30 Vic.,
s. 53. (4) A sentence of dismissal with disgrace shall involve in all cases, forfeiture of all pay, bounty, salvage, prize-money and allowances earned by, and of all annuities, pensions, gratuities, medals and decorations granted to, the offender, and an incapacity to serve the Government again in any capacity, and may also in any case be accompanied by a sentence of imprisonment.

30 Vic.,
s. 53. (5) Except as otherwise provided by this Act, a sentence of imprisonment passed otherwise than under clause (2) of this section may extend to two years.

30 Vic.,
s. 53. (6) A sentence of imprisonment passed whether under clause (2) or clause (5) of this section may be accompanied with a direction that the prisoner shall be kept to hard labour for all or any part of the term of imprisonment.

30 Vic.,
s. 53. (7) The punishment of imprisonment, whether on boardship or on shore, shall involve the disrating of a warrant or petty officer, and shall in all cases be accompanied by forfeiture of pay and allowances during the imprisonment.

30 Vic.,
s. 53. 33. Subject to the foregoing regulations, where any punishment is specified by this Act as the penalty for an offence, and it is further declared that another punishment may be awarded in respect of the same offence, the expression "other punishment" shall be deemed to comprise any one or more of the punishments inferior in degree to the specified punishment according to the scale set forth in section 31.

30 Vic.,
s. 54. 34. No person, unless he is an offender who has avoided apprehension or fled from justice, shall be tried or punished in pursuance of this Act for any offence committed by him unless the trial takes place within three years from the commission of the offence, or within one year after the return of the offender to British India when he has been absent from British India during that period of three years.

CHAPTER III.

JURISDICTION AND POWERS.

35. Subject to the provisions of this Act and, as respects Criminal Courts, subject to the law relating to criminal procedure for the time being in force in British India, and the provisions of section 61 of this Act,

the Criminal Courts and Indian Marine Courts or both shall have jurisdiction in respect of the offences punishable under the sections of this Act mentioned in the first column of the following table as indicated in the third column of that table:—

| Section of this Act. | Marginal note. | Courts having jurisdiction. |
|----------------------|--|--|
| Section 5 | Neglect of duty . . . | Indian Marine Courts. |
| Do. 6 | Mutiny accompanied by violence. | Criminal Courts and Indian Marine Courts. |
| Do. 7 | Mutiny not accompanied by violence. | Ditto. |
| Do. 8 | Inciting to mutiny . . | Ditto. |
| Do. 9 | Mutinous assembly or uttering seditious words. | Ditto. |
| Do. 10 | Concealing traitorous or mutinous practice, design or words. | Ditto. |
| Do. 11 | Striking or using violence to superior officer. | Ditto. |
| Do. 12 | Disobedience or using threatening language to superior officer. | Indian Marine Courts. |
| Do. 13 | Desertion . . . | Criminal Courts and Indian Marine Courts. |
| Do. 14 | Inducing any person to desert. | Ditto. |
| Do. 15 | Breaking out of ship . . | Indian Marine Courts. |
| Do. 16 | Absence without leave . | Criminal Courts and Indian Marine Courts. |
| Do. 17 | Drunkenness and uncleanness. | Ditto. |
| Do. 18 | Cruelty or oppression by gazetted officer. | Ditto. |
| Do. 19 | Suffering vessel to be lost or imperilled. | Indian Marine Courts. |
| Do. 20 | Unlawful taking of goods on board. | Ditto. |
| Do. 21 | Embezzling public stores | Criminal Courts and Indian Marine Courts. |
| Do. 22 | Arson . . . | Ditto. |
| Do. 23 | Making false documents | Indian Marine Courts. |
| Do. 24 | Malingering, or misconduct in hospital. | Ditto. |
| Do. 25 | Creating disturbance on account of complaints. | Ditto. |
| Do. 26 | Offences to the prejudice of good order and discipline not otherwise specified. | Ditto. |
| Do. 27 | Not assisting in apprehending offenders. | Criminal Courts and Indian Marine Courts. |
| Do. 28 | Contempt of Court . . | Ditto. |
| Do. 29 | False evidence . . . | Ditto. |
| Do. 30 | Offences punishable by ordinary law— (a) when the offence is treason, murder, manslaughter, treason-felony or rape; (b) in other cases . . | Criminal Courts. [cf. Army Act, s. 41., Criminal Courts and Indian Marine Courts. |

*The Indian Marine Bill, 1887.**(Chapter III.—Jurisdiction and Powers.—Sections 36-43.)*

Power to pass sentence. 36. Subject as aforesaid—

- (a) a Criminal Court may pass a sentence of death, penal servitude, transportation or imprisonment; and
- (b) an Indian Marine Court may pass any sentence authorised by this Act except a sentence of death, penal servitude or transportation or of imprisonment for a term exceeding two years.

[29 & 30 Vic.,
c. 109, s.
56.]

37. (1) An offence triable by an Indian Marine Court and committed by a person other than a gazetted officer may, under such regulations as the Governor General in Council may make, be summarily tried and punished by the commanding officer of the offender.

[29 & 30 Vic.,
c. 109, s.
56 (2):
47 & 48 Vic.,
c. 39, s. 1.]

(2) Subject to the provisions of this Act and to such restrictions as the Governor General in Council may impose, a commanding officer may pass a sentence of imprisonment for a period not exceeding three months on an offender below the position of petty officer, and may disrate any person not above the position of petty officer.

38. When under section 35 a Criminal Court and an Indian Marine Court have each jurisdiction in respect of an offence, it shall be in the discretion of the Director of Marine or, in prescribed cases, of the commanding officer to decide before what authority the proceedings shall be instituted:

Provided that when the offence is punishable under section 30 and a Criminal Court having jurisdiction is of opinion that the proceedings ought to be instituted before itself, it may by written notice require the Director of Marine or commanding officer to postpone proceedings pending a reference to the Governor General in Council, whose order as to the authority before which the proceedings are to be instituted shall be final.

39. Subject to the provisions of the Indian Marine Service Act, 1884, a person subject to this Act

47 & 48
Vic., c. 38.

may be tried and punished in any place by a Criminal Court or an Indian Marine Court or a commanding officer for an offence punishable under Chapter II in the same manner as if the offence had been committed in that place.

40. Where an offence punishable under Chapter II has been committed by any person while subject to this Act he may be taken into custody and be tried and punished for the offence, although he has ceased to be subject to

this Act, in like manner as he might have been taken into custody and tried and punished if he had continued to be so subject.

41. When a person subject to this Act is accused of an offence in respect of which a Criminal Court would have jurisdiction over him otherwise than under the foregoing sections of this Act, the following rules shall apply:—

- (a) any person subject to this Act shall, on application made to him by the Court, assist in apprehending and securing the accused, and the commanding officer shall, if so required by the Court, deliver the accused to the Court to be proceeded against according to law:

Provided that if the facts constituting the offence also constitute an offence triable by an Indian Marine Court under this Act, and the commanding officer is of opinion that the accused should be tried by an Indian Marine Court or, when the offence is triable by the commanding officer, by him, he may refuse to comply with the requisition of the Criminal Court pending a reference to the Governor General in Council, whose order as to the authority before which the proceedings are to be instituted shall be final;

- (b) when no requisition is made under clause (a), the commanding officer may, if he thinks fit, place the accused in custody with a view to delivering him up to such Criminal Court as appears to him most convenient in all the circumstances of the case.

42. An offender shall not be tried by an Indian Marine Court or by his commanding officer for any offence of which he has been convicted or acquitted by a Criminal Court or a competent Indian Marine Court or, in exercise of the powers conferred by section 37, by his commanding officer.

43. Where a person liable to be tried by an Indian Marine Court under this Act is in confinement in pursuance of a sentence of a Criminal Court, the Director of Marine or other prescribed officer may make an order in the form in Schedule B to the Prisoners' Testimony Act, 1869, directed to the officer in charge of the place in which the person is confined, and the provisions of that Act with respect to compliance with any order made thereunder shall, so far as they can be made applicable, apply in the case of any order made under this section.

XV of
1869.

*The Indian Marine Bill, 1887.**(Chapter III.—Jurisdiction and Powers.—Section 44.—Chapter IV.—Indian Marine Courts.—Sections 45-50.)*

& 30 Vic.,
109, a. 58.]

44. The Governor General in Council may suspend, annul or modify any sentence passed by an Indian Marine Court or a commanding officer under this Act, or substitute a punishment inferior in degree for the punishment involved in any such sentence, or remit the whole or any portion of the punishment involved in any such sentence, or remit the whole or any portion of any punishment into which the punishment involved in any such sentence has been commuted; and any sentence so modified shall (subject to the provisions of this Act) be valid, and shall be carried into execution as if it had been originally passed with such modification by the Court or officer, but so that the punishment involved in any sentence be not increased by any such modification.

CHAPTER IV.

INDIAN MARINE COURTS.

Constitution of the Court.

45. (1) The following authorities shall have power to convene Indian Marine Courts:—

- (a) the Governor General in Council;
- (b) the Director of Marine;
- (c) the Deputy Director of Marine, in the absence of the Director of Marine;
- (d) an officer empowered in that behalf by warrant of the Governor General in Council:

Provided that an Indian Marine Court assembled for the trial of a gazetted officer shall be convened only by, or with the previous sanction of, the Governor General in Council.

(2) A commanding officer of a ship when in detached situations, and when immediate example is necessary, and, without detriment to the public service, reference cannot be made to superior authority, may, without warrant, convene an Indian Marine Court for the trial of any person under his command being subject to this Act and below the rank of a gazetted officer.

& 30 Vic.,
109, a. 58.]

46. (1) An Indian Marine Court shall consist of a president and not less than two or more than four other members being first grade officers as may be ordered by the convening authority:

Provided that an Indian Marine Court convened under section 45, sub-section (2), may be composed of the officer convening the same as president and the two graded officers next in seniority on the spot.

(2) The president of an Indian Marine Court for the trial of a commander shall be a commander, and of the prescribed seniority, and two at least of the other officers composing the Court shall be commanders.

(3) The president of an Indian Marine Court for the trial of any person below the grade of commander, except an Indian Marine Court convened under section 45, sub-section (2), shall be a commander.

(4) A person acting as prosecutor shall not sit on the Court.

(5) An officer convening an Indian Marine Court shall not sit thereon except as permitted by the proviso to sub-section (1).

(6) The president and the other members of every Indian Marine Court shall be named by the authority convening the same.

(7) When an Indian Marine Court after the commencement of the trial is reduced below three members it shall be deemed to be dissolved.

(8) In the case of the death or unavoidable absence of the president of an Indian Marine Court the next senior member of the Court, if qualified under sub-section (2) or sub-section (3), as the case may be, shall take the place of the president without special appointment as such.

Procedure at the Trial.

47. An Indian Marine Court shall be held on board one of Her Majesty's Indian Marine vessels or on land. [29 & 30 Vic., c. 109, a. 59.]

48. As soon as an Indian Marine Court is assembled the names of the members of the Court shall be read over to the prisoner, who shall be asked if he objects to being tried by any of them; if the prisoner objects to any member, the objection shall be decided by the Court; if the objection is allowed, the place of the member objected to shall be filled up by the officer next in seniority on the spot who is not on the Court; subject to the regulations contained in section 46, sub-sections (2), (3), (4) and (5):

Challenge. Provided that where the Court is composed as in the proviso to section 46, sub-section (1), and no officer qualified under section 46 is available to take the place of the officer objected to, the Court shall, after recording the objection, proceed with the trial in like manner as if the objection was disallowed.

49. (1) Before an Indian Marine Court proceeds to try a prisoner an oath or affirmation shall be made by every member of the Court in the prescribed manner. [29 & 30 Vic., c. 109, a. 63.]

(2) An oath or affirmation shall be made in the prescribed manner by any person who gives evidence or acts as an interpreter, before an Indian Marine Court.

50. When no specific charge is made against any person subject to this Act for, or in respect or in consequence of, the wreck, loss, destruction or capture of any vessel in the

*The Indian Marine Bill, 1887.**(Chapter IV.—Indian Marine Courts.—Sections 51-60.)*

Indian Marine Service, all the officers and crew of the vessel may, if the authority convening the Court thinks fit, be tried together before one and the same Indian Marine Court, and any of them, when upon his trial, may be called upon to give evidence on oath or affirmation touching any of the matters then under inquiry, but no person shall be obliged to give any evidence which may tend to criminate himself.

51. If by reason of the illness of the prisoner before the finding it is impossible to continue the trial an Indian Marine Court shall be dissolved.

52. Where an Indian Marine Court is dissolved under section 46, sub-section (7), or under section 51 before the finding, or, in the case of a finding of guilty, before the sentence, the proceedings are null and void, and the prisoner shall be tried before another Indian Marine Court on the same charge or charges.

[Army Act, s. 53 (5).] **53.** The president may, on any deliberation among the members, cause an Indian Marine Court to be cleared of all other persons.

[Army Act, s. 53 (5).] **54.** Every decision of an Indian Marine Court shall be passed by a majority of votes, and where there is an equality of votes the president shall have a second or casting vote:

Provided that if there is an equality of votes on the finding the decision shall be in favour of the accused.

[29 & 30 Vic. c. 109, s. 66.] **55.** (1) Every person who may be required to give evidence or to produce a document before an Indian Marine Court shall be summoned in the prescribed manner.

(2) A summons issued under this section may be sent to any officer exercising magisterial powers within whose jurisdiction the person summoned may be or resides, and the officer shall give effect to the summons as if the witness were required to attend in his Court.

[29 & 30 Vic. c. 109, s. 66.] **56.** When a person subject to this Act commits in presence of an Indian Marine Court an offence punishable under section 28, the Court, if it thinks fit, instead of reserving him for trial by another Court, may, by order under the hand of the president, sentence him to imprisonment with or without hard labour for a term which may extend to one month.

Confirmation of Findings and Sentences.

57. (1) A finding or sentence of an Indian Marine Court shall not be valid except in so far as it may be confirmed.

(2) The authority convening an Indian Marine Court, or an authority empowered to convene such a Court at the date of the submission of the finding and sentence thereof, shall have power to confirm the same, unless otherwise prescribed.

(3) The authority having power to confirm the finding and sentence of an Indian Marine Court may send back the finding and sentence, or either of them, for revision; and, on the finding or sentence being sent back, the Court may, if so directed by the confirming authority, receive additional evidence.

(4) Where the finding only is sent back for revision, the Court may revise the sentence also.

(5) The confirming officer may, in confirming the sentence of an Indian Marine Court,—

(a) reduce the punishment thereby awarded, or commute that punishment to any other punishment of inferior degree to which the offender might have been sentenced by the Court;

(b) suspend for such time as seems expedient the execution of the sentence;

(c) if the finding or sentence is informally expressed, vary the form thereof.

Evidence.

58. The Indian Evidence Act, 1872, subject to such modifications therein and to such additional rules of evidence as the Governor General in Council may, by notification in the Gazette of India, direct, shall apply to all proceedings before Indian Marine Courts.

Preservation of Proceedings.

59. (1) The proceedings of all Indian Marine Courts shall be preserved in the office of the Director of Marine for not less than seven years in the case of the trial of a gazetted officer, or than three years in the case of any other person.

(2) Any person tried by an Indian Marine Court shall be entitled, on demand at any time after the confirmation of the finding and sentence of the Court and before the proceedings are destroyed, to obtain from the officer or person having the custody of the proceedings a copy thereof, upon payment for the same at the prescribed rate.

Power to make Rules respecting Procedure.

60. (1) The Governor General in Council may make rules to regulate the procedure of Indian Marine Courts, and for the purpose of carrying this Act into execution, so far as relates to the investigation, trial and punishment of offences triable by those Courts.

*The Indian Marine Bill, 1887.**(Chapter V.—Supplemental Criminal Provisions.—Sections 61-66.)*

New.]

(2) The Governor General in Council may by any such rule confer on an Indian Marine Court any power (other than a power to try an accused person or pass a sentence) conferred on a Court of original criminal jurisdiction by the Code of Criminal Procedure.

CHAPTER V.

SUPPLEMENTAL CRIMINAL PROVISIONS.

of 1882. Procedure of Criminal Courts beyond British India.

Act XXI of 1879, s. 8.]

61. The law relating to criminal procedure for the time being in force in British India shall, subject to such modifications as the Governor General in Council, by notification in the Gazette of India, directs, apply to all proceedings under this Act in Criminal Courts beyond the limits of British India.

Arrest.

Army Act, s. 8.]

62. The following rules shall apply to persons subject to this Act when charged with offences under this Act :—

(1) Every such person shall be placed in custody, but no person shall be detained in custody longer than is necessary for the purposes of justice.

(2) "Custody" means, according to the usage of the service, the putting of the offender under arrest or the putting him in confinement.

(3) Any officer, the senior if present, may order into custody any other person of inferior rank subject to this Act.

(4) The charge made against every person taken into custody shall, without unnecessary delay, be investigated by his commanding officer or other prescribed authority; and, as soon as may be, proceedings shall be taken for punishing the offender, or he shall be discharged from custody.

Army Act, s. 8.]

63. A commanding officer shall, upon an investigation being made into a charge against a person subject to this Act and under his command of having committed an offence under this Act, dismiss the charge if he thinks that it ought not to be proceeded with; but when he thinks the charge ought to be proceeded with he shall, subject to the provisions of this Act, take steps without delay for bringing the offender to trial.

Act V of 1869, Part III.]

64. When a person subject to this Act, who is accused of an offence cognizable under this Act, is within the jurisdiction of any civil, political or police officer, that officer shall aid in the arrest of the person upon an application to that effect made by the commanding

officer of that person or any prescribed authority, and shall deliver that person when arrested into the prescribed custody:

Provided that, if the person is charged with an offence cognizable otherwise than under this Act, the officer aiding in the arrest may detain the person pending the orders of the Governor General in Council.

Execution of Sentences of Indian Marine Courts and Commanding Officers.

65. (1) Every term of imprisonment, whether original, mitigated or commuted, undergone in pursuance of the sentence of an Indian Marine Court or of a commanding officer shall, except as provided in sub-section (2), be deemed to commence on the day on which the original sentence was signed by the president of the Court or pronounced by the commanding officer.

(2) When a person already undergoing a sentence of penal servitude, transportation or imprisonment is sentenced by an Indian Marine Court to imprisonment, that imprisonment shall commence at the expiration of the penal servitude, transportation or imprisonment to which he has previously been sentenced:

Provided that when under this sub-section, at the expiration of a term of imprisonment to which a person has been sentenced otherwise than under section 32, sub-section (2), another term of imprisonment to which he has been similarly sentenced commences and the aggregate term of imprisonment to which he would be thus liable would, as reckoned from the commencement of his imprisonment, exceed two years, so much of that term as is in excess of two years shall be deemed to be remitted.

66. (1) A person sentenced by an Indian Marine Court to imprisonment shall be detained in the prescribed custody until he is transferred to a prison.

(2) A person sentenced as aforesaid shall, as soon as practicable, be transferred to a prison in British India appointed in this behalf by the Governor General in Council, and shall be delivered over with a warrant of commitment in the prescribed form signed by the prescribed officer to the officer in charge of that prison.

(3) A person transferred to a prison under this section shall thereafter be dealt with in all respects as if he were detained in that prison under a sentence of a Criminal Court:

Provided that—

(a) when he is a person sentenced to imprisonment by his commanding officer the commanding officer, or the Director of Marine, may at any time by order in writing direct that he be discharged;

*The Indian Marine Bill, 1887.**(Chapter V.—Supplemental Criminal Provisions.—Sections 67-70.—Chapter VI.—Provisions of Civil Law.—Section 71.)*

(b) the Director of Marine or any commanding officer may, by order in writing, direct that any person so transferred shall be delivered over to the prescribed custody for the purpose of being brought before an Indian Marine Court either as a witness or for trial or otherwise, and shall again be transferred to the prison.

Savings.

9 & 30 Vic., 109, s. 101.] **67.** Except as expressly provided by this Act, nothing in this Act shall affect the jurisdiction or powers of any Court of criminal jurisdiction.

9 & 30 Vic., 109, ss. 52 and 57.] **68.** Nothing in this Act shall affect any rules, regulations, conditions or customs of the Indian Marine Service now or hereafter in force under which any person may be liable—
(a) to dismissal, loss of seniority, disrating or forfeiture; or
(b) to any restriction not amounting to custody, or any deprivation of indulgence or additional duty, imposed in the way of discipline.

Amendment of Acts.

Act V of 1882, Part III.] **69.** In the Code of Criminal Procedure, section 54, after the words "Army or Navy" the following shall be inserted, namely:—
"or of belonging to Her Majesty's Indian Marine Service and being illegally absent from that service."

9 & 30 Vic., 109, ss. 25 and 26.] **70.** After section 138 of the Indian Penal Code the following section shall be inserted, namely:—
"138A. The foregoing sections of this Chapter shall apply as if Her Majesty's Indian Marine Service were comprised in the Navy of the Queen."

CHAPTER VI.

PROVISIONS OF CIVIL LAW.

Exemption from Process.

Army Act, s. 44.] **71.** (1) A person below the position of gazetted officer shall not, while subject to this Act, be liable to be taken out of the Indian Marine Service by any process, execution or order of any Court of law, or otherwise, or be compelled to appear in person before any Court of law except in respect of the following matters, or one of them, that is to say:—
(a) on account of a criminal charge or conviction;
(b) on account of a decree for money, when the amount exceeds three hundred rupees over and above the costs of the suit.
(2) The Judge of any such Court may examine into any complaint made by any such person, or his superior officer, of the arrest of the person contrary to the provisions of this section, and may by order under his hand discharge the person, and award reasonable costs to the complainant, who

may recover those costs as he might have recovered costs awarded to him by a decree against the person obtaining the process.

72. The clothes, equipment or arms of a person subject to this Act shall not be seized, nor shall the pay and allowances or any part thereof of any such person below the position of a gazetted officer be attached, in any proceeding against him or any person whom he may represent, by any Court of Civil Judicature. [Act V of 1869, Part II (b).]

Property of Deceased Persons and Deserters.

73. The following rules are enacted respecting the disposal of the property of any person subject to this Act who dies or deserts:— [Act V of 1869, Arts. 178 to 179.]

(1) The commanding officer shall secure all the moveable property that is on the spot and cause an inventory thereof to be made.

(2) In the case of a deceased person, if his representative is on the spot and gives security for the payment of the ship and service debts of the deceased, the commanding officer shall deliver over the property to that representative.

(3) In the case of a deceased person, if the property is not dealt with under clause (2), and in the case of every deserter, the commanding officer shall cause the property to be sold by public auction, and from the proceeds of the sale shall pay the ship and service debts and, in the case of a deceased person, the expenses of his funeral ceremonies.

(4) The surplus, if any, shall in the case of a deceased person be paid to his representative.

(5) In the event of no claim for the surplus of a deceased person's estate being established within twelve months after his death, and immediately after the sale of the effects of a deserter, the amount remaining in the hands of the commanding officer shall be remitted to the prescribed officer.

(6) Property deliverable or money payable to the representative of a deceased person under this section may, if the value or amount thereof does not exceed one thousand rupees and the Director of Marine or the prescribed officer thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title; and such delivery or payment shall be a full discharge to those ordering or making the same and to the Secretary of State for India in Council from all further liability in respect of the property or money; but nothing in this section shall affect the rights of any executor or administrator or other representative or of any creditor of a deceased person against a person to whom any such delivery or payment has been made. [Act V of 1873, ss. 4 & 5.]

(7) A person shall be deemed to have deserted within the meaning of this section who has been convicted of desertion, or who has been absent without leave for a period of thirty days from Her Majesty's Indian Marine Service, and has not subsequently surrendered or been apprehended.

STATEMENT OF OBJECTS AND REASONS.

THE Indian Marine Service, as stated in the preamble to the Indian Marine Service Act, 1884 (47 & 48 Vic., c. 38), "is employed under the direction of the Governor General of India in Council for the transport of troops, the guarding of convict settlements, the suppression of piracy, the survey of coasts and harbours, the visiting of lighthouses, the relief of distressed or wrecked vessels, and other local objects, and is maintained out of the revenues of India."

The members of that service, as stated in the same preamble, are not subject either to the Naval Discipline Act, 1866, or to the Merchant Shipping Acts; and as some of them are persons whom the Governor General's Council was not empowered to bind by its enactments except when they might be within certain local limits, the special Act of Parliament just referred to was passed to enable the Governor General's Council to legislate for them.

2. The leading provisions of that Act are recited in the preamble to the Bill, and may be roughly described as empowering the Governor General's Council to pass an Act containing penal provisions similar to those of the Naval Discipline Act, which will be in force against the members of the Indian Marine Service as long as the vessels to which they belong are within Indian waters, that is to say, between the Cape of Good Hope on the west and the Straits of Magellan on the east.

3. Passing over the first chapter of the Bill, which contains definitions and other preliminary matter, it will be found that the second chapter, which deals with "Offences and Punishments," is made up almost altogether of provisions based on those of Parts I and III of the Naval Discipline Act. It should be explained that, having regard to the peculiar wording of the Indian Marine Service Act, it has been thought safest in adopting these provisions of the Naval Discipline Act to adhere very closely to their form; and the result is that it has been necessary to use terms and forms of expression which are not usually to be found in the Acts of the Governor General's Council.

4. It will be observed that the chapter contains no provisions corresponding to those of the Naval Discipline Act headed "Misconduct in the presence of the enemy" and "Communications with the enemy." The vessels of the Indian Marine Service are not likely to be in presence of an enemy except in conjunction with vessels of the Royal Navy, and then, under the sixth section of the Indian Marine Service Act, they could be placed under the command of the senior Naval Officer, and those serving on them brought under the Naval Discipline Act.

5. The section (30) which deals with "offences punishable by ordinary law" has, for the reason mentioned in paragraph 3, been drawn in strict conformity with section 45 of the Naval Discipline Act, that is to say, it makes those offences punishable under the law of England when they cannot properly be dealt with as "acts to the prejudice of good order and discipline not otherwise specified." This might seem to be likely to lead to difficulty; but the occasions for applying the law of England will be extremely rare. The vast majority of the persons to whom the Bill applies will be Native subjects of Her Majesty, who, wherever they may be beyond the limits of British India, are, under section 8 of Act XXI of 1879, amenable to the criminal law of British India, and they could accordingly be dealt with under that law in all cases in which the offence could not properly be dealt with as an act to the prejudice of good order and discipline.

6. The punishments which can be inflicted under the Bill (section 31) correspond with those which can be inflicted under the Naval Discipline Act, section 52, corporal punishment, however, being omitted.

7. In Chapter III, relating to jurisdiction and powers, the Indian legislature is free from the trammels of the Naval Discipline Act, and the provisions proposed, being new, must stand on their own merits.

The most striking feature of the chapter is that, instead of making all offences under the Bill triable by a special professional Court, as under the Army Act and Naval Discipline Act, it calls in the aid of the ordinary Criminal Courts, including (section 2, clause (8)) the Courts of officers of the political service in places beyond British India.

It is proposed (section 35) that certain offences should be triable by the Indian Marine Courts to be presently referred to, that others again should be triable by the ordinary Criminal Courts, and that as regards others again both classes of Courts should have concurrent jurisdiction.

8. Section 36 provides in effect that a Criminal Court may pass a sentence of death, penal servitude, transportation or imprisonment, if such a sentence is within its ordinary powers; and that a Marine Court may pass any sentence authorised by the Bill except a sentence of death, penal servitude, transportation or imprisonment for a term exceeding two years.

9. Section 37 empowers a commanding officer, subject to regulations to be made by the Governor General in Council, to try in a summary manner offences committed by persons below the grade of gazetted officer and triable by a Marine Court, and, subject to any restrictions which the Governor General in Council may impose, to pass a sentence of three months' imprisonment on a person below the position of petty officer, and disrate any petty officer or person of inferior rank.

10. Section 38 provides that in cases in which the Criminal Court and the Marine Court have concurrent jurisdiction the Director of Marine, or in certain cases the commanding officer, may decide before which Court the prosecution is to take place, but that if the offence is one punishable by the ordinary law, and the Criminal Court is of opinion that the offence should be tried before itself, a reference shall be made to the Governor General in Council.

11. Section 41 provides for the delivering up to the Criminal Court of a person subject to the Act who is accused of an offence over which that Court would have jurisdiction apart from the Bill, as, for instance, when such a person is accused of an offence punishable by the ordinary law and committed in British India, or where a Native Indian subject is accused of a like offence committed anywhere. If, however, the facts constituting the offence also constitute an offence triable by a Marine Court, the commanding officer is empowered to require a reference to be made to the Governor General in Council before delivering up the accused.

12. Chapter IV deals with Marine Courts. It is based for the most part on provisions of the Naval Discipline Act, the Army Act and the Native Articles of War, details, however, being left to be provided for by rules framed under section 30. A Marine Court, except in detached situations, where an immediate example is necessary, must (section 46) consist of not less than three first grade officers, the president being a commander. The finding or sentence of the Court is not valid (section 57) except in so far as it may be confirmed by higher authority. Section 58 applies the Indian Evidence Act to Marine Courts subject to such modifications or additional rules of evidence as the Governor General in Council may direct.

13. Chapter V contains certain supplemental criminal provisions. The only one of them which appears to call for special notice is section 68, which provides that nothing in the Act shall affect any rules, regulations, conditions or customs of the service under which a person may be liable—

- (a) to dismissal, loss of seniority, disrating or forfeiture; or
- (b) to any restriction not amounting to custody, or any deprivation of indulgence or additional duty, imposed in the way of discipline.

As regards (a) there appears to be no sufficient reason for treating the Indian Marine differently from any other branch of the public service. In cases where the penalties in question are clearly deserved and are sufficient, the superior executive authorities can safely impose them; while in cases which are doubtful, or in which more severe penalties are called for, they can resort to judicial proceedings under the Bill.

As regards (b) no legislative warrant seems to be required for withholding leave to go on shore, for stopping a man's allowance of spirits or subjecting him to extra watches or drill; and it seems preferable to leave such punishments to be imposed as a matter of discipline by mere executive authority than to confer, as has in some instances been done, a vague power to prescribe "minor punishments".

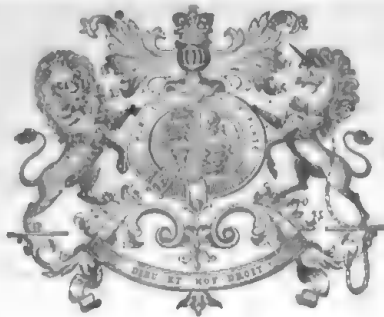
14. The provisions of Chapter VI, exempting persons subject to the Act from certain civil process and providing for the disposal of the property of deceased persons and deserters, are based on enactments contained in the Army Act or Native Articles of War; and the only one of them which appears to call for explanation is clause (6) of section 73, which, following precedents to be found in the Government Savings Banks Act, 1873, the Regimental Debts Act and elsewhere, admits of property of a deceased person which does not exceed one thousand rupees in value being delivered to a person appearing to be his representative without putting the estate to the expense of procuring probate, administration or other conclusive evidence of title. As is usual in such cases, the rights of third parties against the person to whom the property is so delivered are saved; and the persons delivering the property and the Government are indemnified.

The 14th January, 1887.

G. CHESNEY.

S. HARVEY JAMES,

Offg. Secretary to the Government India



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 12, 1887.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of His Excellency the Governor General for making Laws and Regulations or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 11th February, 1887:—

NO. 4 OF 1887.

THE LOWER BURMA COURTS BILL, 1887.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Title, extent and commencement.
2. Repeal.

CHAPTER II.

THE CHIEF COURT.

3. Establishment of Chief Court.
4. Constitution of Chief Court.
5. Appointment of Judges by style of Recorder or Judicial Commissioner.
6. Rank and precedence of Judges.
7. Civil and criminal jurisdiction.

SECTIONS.

8. Exercise of jurisdiction by single and division benches.
9. Constitution of full bench and other benches.
10. Power to refer questions to full bench.
11. Review in certain criminal cases.
12. Finality of orders of Chief Court as Rangoon Court of Session.
13. Appeal from Chief Court exercising original civil jurisdiction.
14. Rule of decision when Judges differ.
15. Procedure in trial of European British subjects.
16. Procedure in exercise of civil jurisdiction.
17. Assessors in civil cases.
18. Ministerial officers of Chief Court.
19. Superintendence and control of Subordinate Courts.
20. Power to Chief Court to make rules.
21. Registers, books, accounts, returns, statements and reports.
22. Advocates of abolished Courts to be advocates of Chief Court.
23. Limits of the towns of Rangoon, Maulmain, Akyab and Bassein.
24. Modification of certain enactments.

CHAPTER III.

THE SUBORDINATE CIVIL COURTS.

Classes of Courts.

25. Classes of Courts.

Territorial Divisions.

SECTIONS.

26. Civil divisions, districts, subdivisions and townships.

Divisional and District Courts.

27. Establishment of Divisional Courts and Courts of District Judges.

28. Original jurisdiction of Divisional Courts and Courts of District Judges.

29. Court of District Judge to be District Court.

Subdivisional and Township Courts.

30. Establishment of Subdivisional and Township Courts.

31. Pecuniary limits of jurisdiction of those Courts.

Small Cause Jurisdiction.

32. Power to confer Small Cause Court jurisdiction.

Suspension and Removal.

33. Suspension and removal of Judges of Subordinate Courts.

Administrative Control.

34. Controlling powers of Divisional and District Courts.

35. Power of Divisional Court to transfer business.

36. Power to distribute business.

37. Ministerial officers of Subordinate Courts.

38. Power to Local Government to make rules as to process-serving establishments.

39. Delegation of powers of District Court with respect to administrative control.

CHAPTER IV.

APPELLATE JURISDICTION IN CIVIL CASES.

40. Appeals from original decrees and orders.

SECTIONS.

41. Power to confer appellate jurisdiction on Subdivisional Judge.

42. Period of limitation for appeal to Divisional Court.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

43. Power to vest insolvency jurisdiction of Chief Court in District Courts.

44. Appointment of additional Judges to Subordinate Courts.

45. Place of sitting.

46. Vacations.

47. Power to extend Presidency Small Cause Courts Act to Court of Small Causes at Rangoon.

48. Continuance of proceedings of abolished Courts.

49. Law to be administered by Courts under this Act.

50. Continuance in force of certain enactments.

51. Mode of appointment and conferring powers.

CHAPTER VI.

TRANSITORY PROVISIONS.

52. Pending proceedings.

53. Appeals after commencement of Act against decrees, judgments and orders passed before.

THE FIRST SCHEDULE—ENACTMENTS REPEALED.

THE SECOND SCHEDULE.—MODIFICATION OF CERTAIN ENACTMENTS.

*The Lower Burma Courts Bill, 1887.**Chapter I.—Preliminary.—Sections 1 and 2.**(Chapter II.—The Chief Court.—Sections 3-7.)**A Bill to consolidate and amend the law relating to Courts in Lower Burma.*

WHEREAS it is expedient to consolidate and amend the law relating to Courts in Lower Burma; and whereas the Secretary of State for India in Council has given his previous sanction to the passing of this Act; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title, extent and commencement.

1. (1) This Act may be called the Lower Burma Courts Act, 1887.

(2) Save in so far as this section, section 2, section 7, clause (c), section 24 and section 52, sub-section (1), apply by necessary implication to other parts of British India, and save also as provided by the Arakan Hills Civil Justice Regulation, 1874, the Arakan Hill District Laws Regulation, 1874, and the Arakan Hills Civil Justice Amendment Regulation, 1876, this Act extends to the territories for the time being comprised in Lower Burma; and

(3) It shall come into force on such date as the Governor General in Council, by notification in the Gazette of India, appoints.

2. (1) On and from the commencement of this Act the enactments mentioned in the first schedule shall be repealed to the extent specified in the third column thereof.

(2) Any enactment or document referring to any of the enactments hereby repealed, or to any enactment repealed by any of those enactments, shall be construed as referring to this Act or to the corresponding portion thereof; and all forms, registers, books, accounts, statements and returns prescribed, rules, orders and appointments made, lists and tables published, limits fixed, directions given and powers conferred under any of the said enactments shall, so far as may be, be deemed to have been respectively prescribed, made, published, fixed, given and conferred after the commencement of this Act.

CHAPTER II.

THE CHIEF COURT.

3. On and from the commencement of this Act there shall be established for Lower Burma a Chief Court, which shall be called the Chief Court of Lower Burma.

4. The Chief Court shall consist of three or more Judges, who shall be appointed by the Governor General in Council and hold their offices during his pleasure. [Act XVIII, 1884, s. 4.]

5. (1) One of the Judges, being a barrister of not less than five years' standing, shall be appointed as Recorder, and one of the Judges as Judicial Commissioner. [New. cf. Act XVIII, 1884, s. 4.]

(2) The other Judge or each of the other Judges, as the case may be, shall be appointed as a Recorder or as a Judicial Commissioner, as the Governor General in Council sees fit.

(3) The substantive incumbents of the offices of the Recorder of Rangoon and the Judicial Commissioner of Lower Burma immediately before the commencement of this Act shall become Judges of the Chief Court, as a Recorder and a Judicial Commissioner, respectively, without further appointment for that purpose.

6. (1) The Judges of the Chief Court shall have rank and precedence according to the seniority of their appointments as such Judges. [Act XVIII, 1884, s. 5.]

Rank and precedence of Judges.

Provided that a Judge substantively appointed shall be deemed senior to an officiating Judge.

(2) If the offices of the Recorder of Rangoon and the Judicial Commissioner of Lower Burma are immediately before the commencement of this Act held by officiating incumbents and those incumbents are appointed to officiate as Judges of the Chief Court, they shall have rank and precedence as Judges of the Chief Court according to the seniority of their appointments as officiating Recorder and officiating Judicial Commissioner respectively.

7. The Chief Court shall be the highest Civil Court of appeal and the highest Court of criminal appeal and revision in and for Lower Burma, and shall— [Act I, 1869 s. 2 (1), and Act X, 1849, s. 4 (5).]

- (a) have power, as a Court of original jurisdiction, to try European British subjects committed to it for trial; [Act XI, 1884 s. 6, and Act XVIII, 1884 s. 7.]
- (b) be the principal Civil Court of original jurisdiction and the Court of Session for the Town of Rangoon; and [Act XVII, 1875, ss. 49 and 60.]
- (c) have within the towns of Rangoon, Maulmain, Akyab and Bassein such powers and authorities with respect to insolvent debtors and their creditors as are for the time being exercisable by a Court for the Relief of Insolvent Debtors under the Statute 11 and 12 Victoria, chapter 21 (an Act to consolidate and amend the law relating to Insolvent Debtors in India). [Act XVII, 1875, s. 66. Cf. Indian Bankruptcy Bill, 1886.]

*The Lower Burma Courts Bill, 1887.**(Chapter II.—The Chief Court.—Sections 8-14.)*

8. (1) The original criminal jurisdiction of the Chief Court as a Court having power to try European British subjects committed to it for trial, and the jurisdiction of the Court as the Court of Session for the Town of Rangoon, shall be exercised by a single Judge of the Court.

[Act XVIII,
1884, s. 8,
sub-section
(7).]

(2) Subject to sub-section (1), and except also as otherwise provided by this Act or by any other enactment for the time being in force, the Chief Court may, with the sanction of the Local Government and the approval of the Governor General in Council, make rules to provide in such manner as it thinks fit, for the exercise by one or more of its Judges of any of its powers.

(3) Where the original jurisdiction of the Chief Court, or the jurisdiction of that Court with respect to proceedings in any Court having jurisdiction within the Town of Rangoon, is exercisable by a single Judge, it shall ordinarily be exercised by a Judge who is a Recorder.

(4) Where the appellate or revisional jurisdiction of the Chief Court with respect to Courts having jurisdiction beyond the limits of the Town of Rangoon, or the power to transfer proceedings pending in any of those Courts, or any other jurisdiction or power with respect to those Courts, is exercisable by a single Judge, it shall ordinarily be exercised by a Judge who is a Judicial Commissioner.

[Act XVIII,
1884, s. 8,
sub-sections
(2) & (9).]

9. (1) When the Chief Court consists of more than three Judges, it may make rules declaring what number of Judges, not being less than three, shall constitute a full bench of the Court, and may by these rules prescribe the mode of determining which Judges shall sit as a full bench when a full bench sitting becomes necessary.

(2) Subject to the provisions of sub-section (1), the senior Judge of the Court may determine which Judge in each case shall sit alone, and which Judges of the Court shall constitute any bench.

[Act XVIII,
1884, s. 11.]

10. Any single Judge of the Chief Court, and any bench of Judges of that Court not being a full bench, may in any case refer for the decision of a full bench any question of law or custom having the force of law, or of the construction of any document, or of the admissibility of any evidence, arising before the Judge or bench, and shall dispose of the case in accordance with the decision of the full bench on the question.

[Letters Patent
of High
Court of Judi-
cature at Fort
William, s.
26; and Act
X. 1882, s.
434.]

11. When in any case any such question as is referred to in the last foregoing section has been decided, without a reference under that section, by a Judge of the Chief Court exercising the original criminal jurisdiction of the Court as a Court having power to try European British subjects committed to it for trial, or the

jurisdiction of the Court as the Court of Session for the Town of Rangoon, the Chief Court may, on its being certified by the Government Advocate that in his opinion the decision is erroneous or should be further considered, review the case or such part of it as may be necessary and finally determine the question, and may thereupon alter the judgment, order or sentence passed by the Judge and pass such judgment, order or sentence as it thinks right.

12. Notwithstanding anything in the Code of Criminal Procedure, 1882, a judgment, order or sentence passed by a Judge of the Chief Court in exercise of the jurisdiction of the Court as the Court of Session for the Town of Rangoon shall not be subject to appeal to or confirmation by the Chief Court, or, save as provided by the last foregoing section, to revision by that Court.

13. Except as otherwise provided by any enactment for the time being in force, an appeal from any decree or order made by the Chief Court—

(a) in exercise of its original jurisdiction as the principal Civil Court of original jurisdiction for the Town of Rangoon, or

(b) in exercise of its original jurisdiction with respect to insolvent debtors and their creditors, or

(c) in exercise of its original jurisdiction in cases withdrawn from other Courts under section 25 of the Code of Civil Procedure, or

(d) in exercise of any other original jurisdiction of a civil nature to which the Chief Court may by rule extend this section,

shall lie in the cases and in the manner following, that is to say:—

(i) if the decree or order is made by a single Judge, the appeal shall lie either to a bench consisting of two other Judges, or to a full bench, as the Court may by general rule or special order direct;

(ii) if the decree or order is made by a bench of Judges not being a full bench, and the Judges differ in opinion, the appeal shall lie to a full bench.

14. Except as otherwise provided by any enactment for the time being in force,—

(i) when there is a difference of opinion among the Judges composing any bench of the Chief Court, the decision shall be in accordance with the opinion of the majority of those Judges;

[Act XVI
1884, s. 1
of Act I
1882, ss.
429 and
and Act
1882, s. 1]

*The Lower Burma Courts Bill, 1887.**(Chapter II.—The Chief Court.—Sections 15-20.)*

(ii) if there is no such majority, then—

(a) if the bench is a full bench, or is exercising original civil jurisdiction, the decision shall be in accordance with the opinion of the senior Judge on the bench;

(b) in other cases, the bench before which the difference has arisen shall refer it to a full bench, and shall dispose of the case in accordance with the decision of the full bench.

15. The provisions of Chapter XXIII of the Code of Criminal Procedure, 1882, with respect to trials before High Courts shall apply to trials before the Chief Court in the exercise of its power to try, as a Court of original jurisdiction, European British subjects committed to it for trial.

16. (1) The Chief Court, when sitting as a Court of civil judicature, shall take evidence and record judgments and orders in the manner required by the Code of Civil Procedure, unless it has, with the previous sanction of the Governor General in Council, made rules for regulating those matters.

(2) If the Chief Court has so made rules for regulating those matters, the Governor General in Council may declare that any of the provisions of the Code of Civil Procedure with respect thereto shall not apply to the Chief Court.

(3) So much of section 579 of that Code as requires the decree to contain the memorandum of appeal and to be signed and dated by the Judge or Judges who passed it shall not apply to the Chief Court in the exercise of its appellate jurisdiction.

17. (1) In any civil case the Chief Court, whether it is exercising its original or its appellate jurisdiction, may, if it thinks fit, summon to its assistance, in such manner as it may by rule direct, two competent assessors.

(2) The assessors shall attend and assist accordingly, and shall receive such fees for their attendance as the Court by rule prescribes.

(3) The fees shall be paid by such of the parties as the Court in each case may direct.

18. (1) Subject to any rules and restrictions which may be prescribed by the Governor General in Council, the Chief Court may appoint a Registrar and Deputy Registrar, and such other ministerial officers as may be necessary for the administration of justice by the Court, and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or by any other enactment for the time being in force.

(2) The appointment of the Registrar and of the Deputy Registrar shall be subject to the sanction of the Local Government.

(3) The officers appointed under this section shall exercise such powers and discharge such duties as the Chief Court may direct.

(4) Any such officer may be suspended or dismissed from his office by order of the Chief Court:

Provided that neither the Registrar nor the Deputy Registrar shall be dismissed without the previous sanction of the Local Government.

19. The general superintendence and control over all other Civil Courts shall be vested in, and all such Courts shall be subordinate to, the Chief Court.

20. (1) In addition to any other power to make rules expressly or by implication conferred by this Act, the Chief Court may, with the previous sanction of the Local Government, make rules consistent with this Act and any other enactment for the time being in force—

(a) providing for the translation of any papers filed in the Chief Court and copying or printing any such papers or translations, and requiring from the persons at whose instance or on whose behalf the papers were filed payment of the expenses thereby incurred;

(b) declaring what persons shall be permitted to practise as petition-writers in the Courts of Lower Burma, and regulating the conduct of persons so practising;

(c) prescribing forms for seals to be used by such of those Courts as are not Provincial Courts of Small Causes;

(d) regulating the procedure in cases where any person is entitled to inspect a record of any Court, or obtain a copy of the same, and prescribing the fees payable by such persons for searches and copies;

(e) conferring and imposing such powers and duties as it thinks fit on the ministerial officers of such of the Courts subject to its superintendence as are not Provincial Courts of Small Causes, and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed;

(f) prescribing forms to be used in the Courts subject to its superintendence for such proceedings, books, entries, statistics and accounts as it thinks necessary;

(g) providing for the inspection of those Courts and the supervision of the working thereof; and

(h) regulating all such matters as it may think fit, with a view to promoting the efficiency.

*The Lower Burma Courts Bill, 1887.**(Chapter II.—The Chief Court.—Sections 21-24.)**(Chapter III.—The Subordinate Civil Courts.—Sections 25-29.)*

ency of the judicial and ministerial officers of those Courts and maintaining proper discipline among those officers.

(2) A rule under clause (a) shall not take effect until it has been confirmed by the Governor General in Council.

(3) Whoever breaks any rule under clause (b) shall be punished with fine which may extend to fifty rupees.

(4) Rules made under clause (h) may provide, among other matters, for fines, to an amount not exceeding one month's salary, being imposed on ministerial officers for misconduct or neglect in the performance of their duties, and for the recovery of fines so imposed by deduction of the amount thereof from any salary which may be or become due to the officers fined.

(5) A rule under any clause of sub-section (I) shall not take effect until it has been published in the Burma Gazette.

21. The Chief Court shall keep such registers, books and accounts as may be necessary for the transaction of the business of the Court, and shall comply, in such form and manner as the Local Government may deem proper, with any requisitions which that Government may make for records of, or papers belonging to, the Chief Court or any Court subordinate thereto, or for certified copies of, or extracts from, those records or papers, or for returns, statements or reports.

22. Persons entitled immediately before the commencement of this Act to be Advocates to appear, plead or act in the Court of the Recorder of Rangoon or in the Court of the Judicial Commissioner of Lower Burma shall be entitled to appear, plead or act, as the case may be, in the Chief Court.

23. (1) The present local limits of the ordinary original civil jurisdiction of the Recorder of Rangoon, Maulmain, Akyab and Bassein shall be the limits of the Town of Rangoon for the purposes of this Act.

(2) But the Local Government may, with the previous sanction of the Governor General in Council, vary those limits, and may, without such sanction, prescribe the limits of the towns of Maulmain, Akyab and Bassein for the purposes of this Act.

24. In the enactments mentioned in the second schedule, for the words specified in the third column of that schedule there shall be substituted the words specified in the fourth column thereof.

CHAPTER III.

THE SUBORDINATE CIVIL COURTS.

Classes of Courts.

25. Besides the Chief Court, the Courts of Small Causes established under the Provincial Small Cause Courts Act, 1887, and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely:—

- (a) the Divisional Court;
- (b) the Court of the District Judge;
- (c) the Subdivisional Court;
- (d) the Township Court.

Territorial Divisions.

26. (1) For the purposes of this Act the Local Government shall divide the territories in Lower Burma into such civil divisions, and each civil division into such civil districts, as may be approved by the Governor General in Council, and each civil district into such civil subdivisions, and each civil subdivision into such civil townships, as the Local Government thinks fit.

(2) The Local Government may, with the previous sanction of the Governor General in Council, alter the limits or the number of these divisions and districts, and, of its own authority, the limits or the number of these subdivisions and townships.

Divisional and District Courts.

27. The Local Government shall establish a Divisional Court for each civil division, and a Court of a District Judge for each civil district, and shall appoint a Judge of each such Court:

Provided that the same person may, if the Local Government thinks fit, be appointed to be Judge of the Divisional Courts of two or more civil divisions or to be District Judge of two or more civil districts.

28. Except as otherwise provided by any enactment for the time being in force, the Divisional Court and the Court of the District Judge shall have jurisdiction in original civil suits without limit as regards the value.

29. Except as otherwise provided by any enactment for the time being in force, the Court of the District Judge shall have jurisdiction in original civil suits without limit as regards the value.

*The Lower Burma Courts Bill, 1887.**(Chapter III.—The Subordinate Civil Courts:—Sections 30-37.)*

trict Judge shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the district:

Provided that—

of 1869.

(a) for the purposes of the Indian Divorce Act the Divisional Court shall be deemed to be the District Court for all districts comprised in the division; and

(b) the Local Government may, with the previous sanction of the Governor General in Council, direct that the Divisional Court shall for any other purpose be deemed to be the District Court or principal Civil Court of original jurisdiction for any district comprised in the division.

Subdivisional and Township Courts.

30. The Local Government shall establish a Subdivisional Court for each civil subdivision, and a Township Court for each civil township, and shall appoint a Judge of each such Court, to be called, respectively, Subdivisional Judge and Township Judge.

Provided that the same person may, if the Local Government thinks fit, be appointed to be Judge of the Subdivisional Courts of two or more civil subdivisions, or to be Judge of the Township Courts of two or more civil townships.

31. (1) The jurisdiction to be exercised in original civil suits as regards the value by any person appointed to be a Subdivisional Judge or Township Judge shall be determined by the Local Government, either by including him in a class or grade, or otherwise, as the Local Government thinks fit.

(2) The jurisdiction in the case of a Subdivisional Judge shall not extend to suits of value exceeding five thousand rupees, or in the case of a Township Judge to suits of value exceeding one thousand rupees.

Small Cause Jurisdiction.

32. (1) The Local Government may confer, within such local limits as it thinks fit, the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, upon the Judge of any of the following Courts for the trial of suits cognizable by a Court of Small Causes under that Act up to

such value, not exceeding that specified against those Courts, as it thinks fit:—

| Court. | Value. |
|--|--------|
| | Rs. |
| Court of the District Judge of Maulmain | 1,000 |
| Court of any other District Judge, or Subdivisional Court or Township Court. | 500 |

(2) The Local Government may withdraw any jurisdiction so conferred.

Suspension and Removal.

33. Any Judge of a Divisional Court or any District Judge, Subdivisional Judge or Township Judge may be suspended or removed from office by the Local Government. [Act XVII, 1875, s. 39, amended by Act X, 1884, s. 10.]

Administrative Control.

34. (1) Subject to the general superintendence and control of the Chief Court, the Divisional Court shall control all other Civil Courts in the division. [Act XVIII, 1884, s. 23.]

(2) Subject as aforesaid and to the control of the Divisional Court, the Court of the District Judge shall control all other Civil Courts in the district.

35. (1) The Divisional Court may exercise, as regards the Courts under its control, the same powers of withdrawal, trial and transfer as are conferred by section 25 of the Code of Civil Procedure on a District Court. [Act XVIII, 1884, s. 34.]

(2) The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of the suit, be deemed to be a Court of Small Causes.

36. Notwithstanding anything contained in the Code of Civil Procedure, the Divisional Court and the Court of the District Judge may, by written order, direct that any civil business cognizable by it and the Courts under its control shall be distributed among those Courts in such manner as it thinks fit. [Act XVIII, 1884, s. 35.]

Provided that no direction issued under this section shall empower any Court to exercise any powers or deal with any business beyond the limits of its proper jurisdiction.

37. (1) The ministerial officers of the Divisional Court and of the Court of the District Judge shall be appointed, and may be suspended or dismissed, by the Judges of those Courts respectively. [Act XVIII, 1884, s. 36.]

The Lower Burma Courts Bill, 1887.

(Chapter III.—*The Subordinate Civil Courts.*—Sections 38-39. Chapter IV.—*Appellate Jurisdiction in Civil Cases.*—Sections 40-42.) Chapter V.—*Supplemental Provisions.*—Sections 43-44.)

(2) The ministerial officers of Subdivisional Courts and Township Courts shall be appointed, and may be suspended or dismissed, by the Court of the District Judge.

(3) An appointment under this section shall be subject to such rules as the Local Government prescribes, and, in dealing with any matter under this section, the Court of the District Judge shall act subject to the control of the Divisional Court.

38. The Local Government, with the previous sanction of the Governor General in Council, may, notwithstanding anything in the Court-fees Act, 1870,

make rules with respect to the establishments to be maintained for the service and execution of processes issued by Civil and Criminal Courts and Revenue Courts and authorities, and rules so made may be declared by the Local Government to be in supersession of all or any rules made under sections 22 and 23 of that Act.

39. The District Judge may, with the previous sanction of the Local Government, delegate to any Subdivisional Judge in the district the powers conferred on the Court of the District Judge by sections 34, 36 and 37 of this Act and section 25 of the Code of Civil Procedure, to be exercised by the Subdivisional Judge in any specified portion of the district subject to the control of the Court of the District Judge.

CHAPTER IV.

APPELLATE JURISDICTION IN CIVIL CASES.

40. (1) Save as otherwise provided by the Code of Civil Procedure or by any other enactment for the time being in force, an appeal from a decree or order of a Township Court, or from an original decree or order of a Subdivisional Court, shall lie to the Court of the District Judge.

(2) Save as aforesaid, an appeal from an original decree or order of a Court of a District Judge, other than the Court of the District Judge of Maulmain, shall lie to the Divisional Court.

(3) Save as aforesaid, an appeal from an original decree or order of a Divisional Court or of the Court of the District Judge of Maulmain shall lie to the Chief Court.

41. (1) The Local Government may confer on a Subdivisional Judge the powers of a Judge of a District Court for the purpose of hearing appeals from Township Courts in any local area, and may withdraw those powers.

(2) A Subdivisional Judge shall, for purposes connected with the exercise of powers so conferred, be deemed to be a District Judge.

42. The period of limitation for an appeal to a Divisional Court shall be sixty days from the date of the decree appealed against, and shall be computed in accordance with the provisions of the Indian Limitation Act, 1877.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

43. (1) The Local Government may, by order notified in the Burma Gazette, direct that, from a date to be therein specified, the jurisdiction vested in the Chief Court within the towns of Maulmain, Akyab and Bassein by clause (c) of section 7 shall be vested, as regards each or any of those towns, in the Court of the District Judge exercising jurisdiction in the town.

(2) While any such order is in force, that clause and clause (d) of section 6 of the Code of Civil Procedure shall, with respect to any town to which the order applies, have effect as if they referred to the Court of the District Judge in which the jurisdiction is so vested instead of to the Chief Court, and all cases pending at the date of the order shall be disposed of accordingly.

(3) Provided that nothing in this section shall prevent the Chief Court from entertaining and disposing of in that Court any case, whether pending at the date of the order or subsequently instituted, which, by reason of the importance of the case or otherwise, may, in the opinion of the Court, be more conveniently so disposed of.

(4) The Local Government may, by order notified as aforesaid, cancel any order made under sub-section (1) as to all or any of the towns to which the order applies, but not so as to affect any proceedings pending at the date of the cancelling order.

44. (1) When the business pending before the Judge of any Court subordinate to the Chief Court appears to the Local Government to require the aid of an additional Judge for its speedy disposal, that Government may of its own authority if the Judge is a Township Judge or Subdivisional Judge, and with the previous sanction of the Governor General in Council in any other case, appoint an additional Judge and invest him with all or any of the powers of the Judge of the Court with respect to any particular class or classes of cases or with respect to cases generally.

*The Lower Burma Courts Bill, 1887.**(Chapter V.—Supplemental Provisions.—Sections 45-51. Chapter VI.—Transitory Provisions.—Sections 52-53.)*

(2). The Court of the additional Judge shall, for purposes connected with the exercise of those powers, be deemed to be the Court of the Judge.

(3) The Local Government may, by written order, direct how business is to be distributed between the Judge and the additional Judge.

45. (1) The Local Government may fix the place or places at which any Court under this Act is to be held.

(2) The place or places so fixed may be beyond the local limits of the jurisdiction of the Court.

(3) Except as may be otherwise provided by any order under this section, a Court under this Act may be held at any place in Lower Burma within the local limits of its jurisdiction.

46. (1) Subject to the approval of the Local Government, the Chief Court shall prepare a list of days to be observed in each year as holidays in the Chief Court and the Civil Courts subordinate thereto.

(2) The list shall be published in the Burma Gazette.

47. (1) The Governor General in Council may extend to the Court of Small Causes at Rangoon the whole or any part of the Presidency Small Cause Courts Act, 1882, with such modifications as may appear to him to be proper.

(2) The modifications may include a reduction of the value of the suits which the Court is to have jurisdiction to try.

48. (1) Where a Court has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of the former Court has been transferred.

(2) Nothing in this section applies to cases for which provision is made in section 623 or section 649 of the Code of Civil Procedure or in any other enactment for the time being in force.

49. (1) Where, in any suit or other proceeding, it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage

or caste, or any religious usage or institution,—the Buddhist law in cases in which the parties are Buddhists, the Muhammadan law in cases in which the parties are Muhammadans, and the Hindu law in cases in which the parties are Hindus,

shall form the rule of decision, except in so far as such law has, by legislative enactment, been altered or abolished, or is opposed to any custom having the force of law in Lower Burma.

(2) In cases not provided for by sub-section (1) or by any other law for the time being in force, a Court under this Act shall act according to justice, equity and good conscience.

50. (1) The unreppealed portions of the following Acts and Regulations shall, so far as they can be made applicable, continue to be in force in Lower Burma, namely:—

- (a) Act XIX of 1841 (*Wrongful possession in cases of successions*);
- (b) Act XL of 1858 (*Minors, Bengal*);
- (c) Bengal Regulation V of 1799, section 7 (*Intestacies of Natives*);

(d) Bengal Regulation III of 1818 (*State Prisoners*).

(2) Section 7 of Regulation V of 1799 shall have effect, and, so far as may be necessary to validate anything heretofore done thereunder by the Local Government, shall be deemed to have had effect, as if the Local Government were therein referred to instead of the Governor General in Council.

51. The Local Government may, when it is empowered by this Act to make any appointment or confer any powers, appoint, or confer the powers on, any person either specially by name or generally by virtue of his office.

CHAPTER VI.

TRANSITORY PROVISIONS.

52. (1) All proceedings commenced before the commencement of this Act in the High Court of Judicature at Fort William in Bengal shall be continued in that Court as if this Act had not been passed.

(2) All proceedings commenced before the commencement of this Act in any Court mentioned in the first column of the following table shall be continued as if they had been instituted in the Court specified against that Court in the second column of the table:—

| 1. | 2. |
|--|----------------------------------|
| The Special Court. | The Chief Court. |
| The Court of the Recorder of Rangoon. | |
| The Court of the Judicial Commissioner of Lower Burma. | |
| The Court of the Commissioner. | The Divisional Court. |
| The Court of the Judge of the Town of Maulmain. | |
| The Court of the Deputy Commissioner. | The Court of the District Judge. |
| The Court of the Assistant Commissioner. | |
| The Court of the Extra Assistant Commissioner. | The Subdivisional Court. |
| The Court of the Myo-ök. | |
| | The Township Court. |

53. Appeals from decrees, judgments and orders passed and not appealed against before the date of the commencement of this Act shall lie and be disposed of as if this Act had not been passed, and not otherwise:

Appeals after commencement of Act against decrees, judgments and orders passed before.

Provided that the Court to which such appeals shall lie shall be as follows:—

(a) when the appeal would before that date have lain to the High Court of Judicature at Fort William in Bengal, or to the Special Court, the Court of the Recorder of Rangoon or the Court of the Judicial Commissioner of Lower Burma—the Chief Court;

(b) when the appeal would before that date have lain to the Court of the Commissioner—the Divisional Court;

(c) when the appeal would before that date have lain to the Court of the Deputy Commissioner—the Court of the District Judge;

(d) when the appeal would before that date have lain to an Assistant Commissioner—the Court of the Subdivisional Judge empowered under section 41 to hear appeals in the place where the Assistant Commissioner had power to hear them, or, if there is not a Subdivisional Judge empowered as aforesaid in that place, then the Court of the District Judge.

*The Lower Burma Courts Bill, 1887.**(The First Schedule—Enactments repealed. The Second Schedule—Modification of certain Enactments.)*

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

| Number and year. | Title of Enactment. | Extent of repeal. |
|------------------|--------------------------------------|---|
| 1 | 2 | 3 |
| Act IV of 1869 | Indian Divorce Act | In section 8, clause (2), the words "in Pegu—the Recorder at Rangoon; in Arakan—the Recorder at Rangoon until a Recorder's Court is established at Akyab, and thenceforward the Recorder at Akyab; in the Tenasserim Provinces—the Recorder at Maulmain". |
| Act XV of 1869 | Prisoners' Testimony Act | The third paragraph of section 7 and the second paragraph of section 8. |
| Act X of 1873 | Indian Oaths Act | The <i>Explanation</i> to section 7. |
| Act XIII of 1874 | European British Minors Act | In the form of <i>Petition for Appointment of Guardian</i> in the schedule, the words "In the Court of the Recorder of Rangoon, or". |
| Act XVII of 1875 | Burma Courts Act | So much as has not been repealed. |
| Act III of 1879 | Destruction of Records | The second paragraph of section 2. |
| Act XI of 1880 | Burma Courts Act | The whole. |
| Act VII of 1882 | Powers of Attorney Act | Clause (f) of section 4. |
| Act X of 1882 | Code of Criminal Procedure | (1) The second paragraph of section 185; and (2) in section 487, the words "the Recorder of Rangoon". |
| Act XIV of 1882 | Code of Civil Procedure | (1) In the penultimate paragraph of section 287 the words "As regards his own Court and the Court of Small Causes at Rangoon, the Recorder of Rangoon shall be deemed to be a High Court within the meaning of this paragraph"; (2) in section 386, the words "or the Court of the Recorder of Rangoon"; and (3) section 614. |
| Act V of 1883 | Indian Merchant Shipping Act | Sub-section (2) of section 15. |
| Act VI of 1884 | Inland Steam-vessels Act | Sub-section (2) of section 39. |
| Act X of 1884 | Burma Courts Act | The whole. |
| Act XIV of 1885 | Burma Courts Act | The whole. |

THE SECOND SCHEDULE.

MODIFICATION OF CERTAIN ENACTMENTS.

(See section 24.)

| Number and year. | Title of Enactment. | Words to be replaced. | Words to be substituted for those replaced. |
|------------------|---------------------|--|--|
| 1 | 2 | 3 | 4 |
| Act IV of 1869 | Indian Divorce Act. | In section 8, clause (1), the words "in British Burma—the High Court of Judicature at Fort William in Bengal". | The words "in Lower Burma—the Chief Court of Lower Burma". |

*The Lower Burma Courts Bill, 1887.**(The Second Schedule.—Modification of certain Enactments.)*

SECOND SCHEDULE—continued.

| Number and year. | Title of Enactment. | Words to be replaced. | Words to be substituted for those replaced. |
|--------------------------|--|--|--|
| 1 | 2 | 3 | 4 |
| Act XIII of 1874 | European British Minors Act. | (1) In section 2, the words "Court of the Recorder of Rangoon, and, elsewhere, the Court of the Deputy Commissioner"; (2) In section 8, the words "Deputy Commissioners", in each place where they occur, and the words "Judicial Commissioner". | (1) The words "Chief Court of Lower Burma, and, elsewhere, the Court of the District Judge"; (2) The words "District Judges", and the words "Chief Court of Lower Burma", respectively. |
| Act II of 1877 | Probate | The words "Court of the Recorder of Rangoon". | The words "Chief Court of Lower Burma". |
| Act V of 1880 | Burma Boundaries Act. | (1) In section 19, the words "Judicial Commissioner, or, when the land comprised in the order is situated within the local limits of the ordinary civil jurisdiction of the Recorder of Rangoon, to such Recorder"; (2) In section 21, the words "the Judicial Commissioner and the Recorder of Rangoon". | (1) The words "Chief Court". (2) The words "and the Chief Court". |
| Act V of 1881 | Probate and Administration Act. | In section 59, the words "Court of the Recorder of Rangoon". | The words "Chief Court of Lower Burma". |
| Act X of 1882 | Code of Criminal Procedure. | (1) In section 4, clause (i), the words "Recorder of Rangoon"; (2) In section 25, the words "the Judges of the High Courts and the Recorder of Rangoon". | (1) The words "Chief Court of Lower Burma"; (2) The words "and the Judges of the High Courts". |
| Act XIV of 1882 | Code of Civil Procedure. | (1) In section 6, clause (d), the words "Recorder of Rangoon sitting as an Insolvent Court"; (2) In section 539, clause (b), the words "Court of the Recorder of Rangoon". | (1) The words "Chief Court of Lower Burma sitting as an Insolvent Court under the Statute 11 & 12 Victoria, chapter 21"; (2) The words "Chief Court of Lower Burma". |
| Regulation VIII of 1874. | Arakan Hills Civil Justice Regulation. | In section 76, the words "Judicial Commissioner of British Burma" and the words "Judicial Commissioner shall". | The words "Chief Court of Lower Burma" and the words "Chief Court shall", respectively. |
| Regulation IX of 1874. | Arakan Hill District Laws Regulation. | In section 4, the words from and inclusive of "The functions of the High Court under the Code of Criminal Procedure" down to and inclusive of "the Judicial Commissioner of British Burma". | The words "The functions of the High Court in criminal cases shall be discharged by the Chief Court of Lower Burma". |
| Regulation VII of 1886. | Upper Burma Criminal Justice Regulation. | In section I, sub-section (1), of the schedule, the words "Recorder of Rangoon" in both places where these words occur. | The words "Chief Court of Lower Burma". |

STATEMENT OF OBJECTS AND REASONS.

THE defective constitution of the Special Court, the increase of business in the Court of the Recorder of Rangoon, and the complaints which have been made respecting the finality of the decrees and orders of the Recorder in some cases, and respecting the delay and expense involved in appeals to the High Court at Calcutta in other cases, having rendered necessary a revision of the existing arrangements for the administration of justice in Lower Burma, the Government of India has decided, with the sanction of the Secretary of State in Council, to constitute at Rangoon a Chief Court on the model, so far as practicable, of the Chief Court at Lahore.

The main object of this Bill is to give effect to that decision.

2. It is proposed by the Bill to abolish the Court of the Recorder, the Court of the Judicial Commissioner and the Special Court, and to establish in their place a Chief Court which will be for Lower Burma the Court of ultimate resort in India.

The Chief Court is to consist of three or more Judges, of whom one at least must be a barrister of five years' standing. That Judge will be styled Recorder, and one of the other Judges will be styled Judicial Commissioner. The other Judge or each of the other Judges, as the case may be, is to be appointed as a Recorder or as a Judicial Commissioner, as the Governor General in Council sees fit. The Recorder or Recorders will ordinarily exercise the original jurisdiction of the Court and such other jurisdiction as has reference to the Town of Rangoon, while the Judicial Commissioner or Judicial Commissioners will ordinarily exercise the appellate and revisional jurisdiction of the Court in reference to the Courts subordinate to it beyond the limits of the Town of Rangoon, and discharge with respect to those Courts the functions of superintendence which are vested in the Chief Court.

3. The other portions of the Bill which seem to call for remark are the following :—

(1) *Section 7.*—It will be observed that this section, which constitutes the Chief Court the High Court for Lower Burma, makes no reference to the admiralty jurisdiction conferred on the Court of the Recorder by section 65 of the Burma Courts Act, 1875. The admiralty jurisdiction which can be conferred by the Governor General in Council is very limited, and a preferable course to continuing by an Act of the Indian Legislature such admiralty jurisdiction as is now vested in the Court of the Recorder will, in the opinion of the Government of India, be to wait for the passing of a Colonial Admiralty Courts Bill, which is about to be introduced into Parliament, and under which the Chief Court of Lower Burma will be constituted a Colonial Admiralty Court with full jurisdiction in admiralty matters.

The Chief Court will be, as the Court of the Recorder is, the Court of Session for the Town of Rangoon, and under section 12 of the Bill the orders passed by it as a Court of Session will, subject to such review as is provided for in section 11, be final.

The existing jurisdiction of the Court of the Recorder with respect to insolvent debtors is continued. It will be superseded by the Indian Bankruptcy Bill when that measure becomes law.

(2) *Section 14.*—The cases to which this section is designed to apply are cases for which provision is not made by section 378, 429 or 439 of the Code of Criminal Procedure, or section 575 of the Code of Civil Procedure. Such are cases coming before the Court in the exercise of its original or revisional civil jurisdiction and references under section 617 of the Code of Civil Procedure.

(3) *Section 22.*—All advocates entitled to appear, plead or act in the Special Court are to be entitled to appear, plead or act, as the case may be, in the Chief Court.

The intention of the Local Government to extend to Lower Burma parts of the Legal Practitioners Act, 1879, as amended by Act IX of 1884, renders it unnecessary to re-produce the provisions of the Burma Courts Act, 1875, respecting the licensing and fees of advocates.

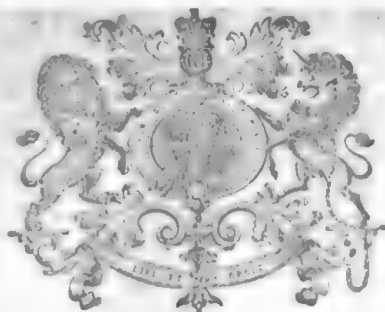
(4) *Chapters III and IV.*—Concurrently with the constitution of the Chief Court, it is proposed to re-organise the subordinate Courts and to allow second appeals from decrees and orders passed by lower appellate Courts to be governed by the Code of Civil Procedure instead of by the special rules prescribed in the Burma Courts Act, 1875.

The 11th February, 1887.

ANDREW R. SCOBLE.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, MAY 28, 1887.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA. LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 25th May, 1887:

NO. 5 OF 1887.

A Bill to amend the Indian Stamp Act, 1879.

WHEREAS it is expedient to amend certain provisions of the Indian Stamp Act, 1879, relating to policies of insurance;

It is hereby enacted as follows:

1. For clause (15) of section 3 of that Act the Amendment of definition of "policy of insurance" following shall be substituted, namely:

"(15) 'Policy of insurance' means any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event, and it includes any writing evidencing the renewal of any such instrument for the purpose of keeping the engagement in force:

"It includes a life-policy."

2. For article 49 of the first schedule to that Act the following shall be substituted, namely: Schedule I.

| DESCRIPTION OF INSTRUMENT. | PROPER STAMP-DUTY. | |
|--|--------------------|---|
| | (If drawn singly.) | (If drawn in duplicate, for each part.) |
| | Rs. A. P. | Rs. A. P. |
| (a) In the case of sea-insurance— When the amount Rs. insured does not exceed 1,000 And for every further sum of Rs. 1,000 or part thereof in excess of 1,000 | 0 4 0 0 4 0 | 0 2 0 0 2 0 |
| (b) In the case of fire-insurance— i. In respect of an original policy for a month or any shorter term— When the amount Rs. insured does not exceed 1,000 And for every further sum of Rs. 1,000 or part thereof in excess of 1,000 | 0 2 0 0 2 0 | 0 1 0 0 1 0 |
| ii. In respect of an original policy for more than one month but not more than three months— When the amount Rs. insured does not exceed 1,000 | 0 3 0 | 0 2 0 |

49. POLICY OF INSURANCE.

See Exemption, Schedule II [No. 14 (a)].

| DESCRIPTION OF INSTRUMENT. | PROPER STAMP-DUTY. | |
|--|--------------------|---------------------------------------|
| | If drawn singly. | If drawn in duplicate, for each part. |
| | Rs. A. P. | Rs. A. P. |
| And for every further sum of Rs. 1,000 or part thereof in excess of . 1,000 | 0 3 0 | 0 2 0 |
| iii. In respect of an original policy for more than three months but not more than six months— | | |
| When the amount insured does not exceed . 1,000 | 0 4 0 | 0 3 0 |
| And for every further sum of Rs. 1,000 or part thereof in excess of . 1,000 | 0 4 0 | 0 3 0 |
| iv. In respect of an original policy for a year or any longer term— | | |
| When the amount insured does not exceed . 1,000 | 0 6 0 | 0 3 0 |
| And for every further sum of Rs. 1,000 or part thereof in excess of . 1,000 | 0 6 0 | 0 3 0 |
| v. In respect of renewing, for the purpose of keeping in force, a policy granted for any shorter term than one year | | |
| <p>The same duty as would be payable in respect of an original policy for the amount and term to which the renewal extends:</p> <p>Provided that duty shall not be payable in respect of the renewal when the duty already paid in respect of the original policy, or in respect of the original policy and previous renewal thereof, is equal to or exceeds the duty which would be payable in respect of an original policy for the amount aforesaid for a year, and that, where the duty payable in respect of the renewal would, when added to the duty already paid in respect of the original policy, or in respect of the original policy and previous renewal thereof, exceed the duty payable in respect of an original policy for the amount aforesaid for a year, the duty payable in respect of the renewal shall not exceed the difference between the duty already paid and the duty payable in respect of an original policy for the amount aforesaid for a year.</p> | | |
| (c) In the case of any other insurance— | Rs. A. P. | Rs. A. P. |
| When the amount insured does not exceed . 1,000 | 0 6 0 | 0 3 0 |
| And for every further sum of Rs. 1,000 or part thereof in excess of . 1,000 | 0 6 0 | 0 3 0 |

49. POLICY OF INSURANCE—concl.

STATEMENT OF OBJECTS AND REASONS.

IN the Resolution of the Department of Finance and Commerce, No. 1016, dated the 5th March, 1886, published in the *Gazette of India* of 6th March, 1886, opinion was invited on certain proposals of the Government of Bengal for the reduction of the stamp-duty payable on policies of fire-insurance for short terms.

Those proposals having been generally accepted as fair and equitable, this Bill has been prepared for the purpose of giving effect to them.

2. One Insurance Company, while recommending the reduction of stamp-duty on annual fire-policies, proposes to solve the difficulty of levying duty on renewals of fire-policies for short terms by prohibiting such renewals altogether, and asserts that this course would be productive of no inconvenience to the public, and of no appreciable inconvenience to Insurance Companies. The Government of India is not prepared to adopt this proposal unless it is assured by the almost unanimous opinion of those engaged in fire-insurance business that the prohibition of renewals would not lead to inconvenience. If such an assurance is forthcoming, it will be considered by the Select Committee to which this Bill is to be referred.

3. It is proposed so to amend the definition of "policy of insurance" as to make section 65 of the Indian Stamp Act, 1879, clearly applicable as well to contracts of renewal or continuance of insurance as to original policies.

4. Insurance Companies are invited to state, in their opinions on the Bill, the mode which will be most convenient to them of paying stamp-duty on renewals of policies of insurance.

The 25th May, 1887.

A. COLVIN.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.



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PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 8th June, 1887:

NO. 6 OF 1887.

A Bill for the Protection of Game.

WHEREAS municipal authorities in different parts of British India have from time to time made rules for the protection of game;

And whereas it is expedient that Local Governments and cantonment-authorities as well as municipal authorities should be empowered to make such rules;

It is hereby enacted as follows:—

1. (1) This Act may be called the Game Protection Act, 1887.

Title, extent and commencement.

(2) It extends to the whole of British India; and

(3) It shall come into force at once.

Definitions. 2. In this Act—

(1) "municipal authority" means the commissioners, committee, board, council or person having authority over a municipality under any enactment for the time being in force:

(2) "cantonment-authority" means a cantonment-committee or, in the case of a cantonment for which such a committee has not been consti-

tuted, the commanding officer of the cantonment: and

(3) "authority" means Local Government, municipal authority or cantonment-authority, as the case may be.

3. (1) The Local Government with respect to any municipality or cantonment within the territories under its administration, or the municipal authority or cantonment-authority of any municipality or cantonment, with the previous sanction of the Local Government, may from time to time make rules—

(a) defining the word "game" for the purposes of this Act in its application to the municipality or cantonment;

(b) defining for those purposes the breeding season of any kind of game; and

(c) prohibiting, absolutely or subject to conditions, the possession or sale within the municipality or cantonment of any kind of game during its breeding season, or the importation into the municipality or cantonment of the fur or plumage of any kind of game during such season.

(2) The authority making a rule under clause (c) of sub-section (1) may direct that a breach of it shall be punishable with fine which may extend to five rupees for every head of game in respect of which the breach of the rule has been committed.

[1 & 2 Wm. IV, c. 32, s. 4.]

(3) A Magistrate shall not take cognizance of a breach of any such rule except on the complaint of the authority which made the rule, or of some person authorised by that authority in this behalf.

STATEMENT OF OBJECTS AND REASONS.

For many years past the committees of certain municipalities in Northern India have, for the purpose of preserving game from destruction, prescribed close seasons during which the possession or sale of game within municipal limits is prohibited.

2. This measure has to some extent attained its object, but its legality is open to question.

3. In these circumstances it is proposed to place beyond doubt the power of municipal committees to take such action and to confer similar powers on cantonment-authorities with respect to cantonments, and on Local Governments with respect to any municipality or cantonment within the territories respectively administered by them.

The 8th June, 1887.

J. B. PEILE.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 8th June, 1887:

NO. 7 OF 1887.

THE ALLAHABAD UNIVERSITY
BILL, 1887.

CONTENTS.

SECTIONS.

1. Title and commencement.
2. Establishment and incorporation of University.
3. Chancellor.
4. Vice-Chancellor.
5. Fellows.
6. First Fellows.
7. Vacation of office of Fellow.
8. Constitution and powers of Senate.
9. Chairman at meetings of Senate.
10. Proceedings at meetings of Senate.
11. Appointment of Syndicate, Faculties, examiners and officers.
12. Functions of Syndicate.
13. Power to confer degrees after examination.
14. Power to confer honorary degrees.
15. Power to levy fees.
16. Power to make rules.
17. Officers and servants of the Senate to be deemed to be public servants.
18. Duty of Local Government to enforce Act and rules.
19. Notifications in certain cases.
20. Annual accounts.

THE SCHEDULE.

PART I.—OFFICES TO BE DEEMED TO HAVE BEEN SPECIFIED UNDER SECTION 5, SUB-SECTION (1), CLAUSE (a).

PART II.—PERSONS TO BE DEEMED TO HAVE BEEN APPOINTED, OR TO HAVE BEEN ELECTED AND APPROVED, AS FELLOWS UNDER SECTION 5, SUB-SECTION (1), CLAUSE (b) OR CLAUSE (c).

A Bill to establish a University at Allahabad.

WHEREAS it has been determined to establish a University at Allahabad; It is hereby enacted as follows:—

Title and commencement. 1. (1) This Act may be called the Allahabad University Act, 1887; and

(2) It shall come into force at once.

Establishment and incorporation of University. 2. (1) A University shall be established at Allahabad, and the Governor-General for the time being shall be the Patron of the University.

(2) The University shall consist of a Chancellor, a Vice-Chancellor and such number of Fellows as may be determined in manner hereinafter provided.

(3) The University shall be a body corporate by the name of the University of Allahabad, having perpetual succession and a common seal, with power to acquire and hold property, moveable or immoveable, to transfer the same, to contract, and to do all other things necessary for or incidental to the purposes of its constitution.

(4) The University shall come into existence on such day as the Local Government may, by notification in the official Gazette, appoint in this behalf.

3. The Lieutenant-Governor of the North-Western Provinces for the time being shall be the Chancellor of the University, and the first Chancellor shall be the Honourable Sir Alfred Comyns Lyall, Knight Commander of the Most Honourable Order of the Bath, Knight Commander of the Most Eminent Order of the Indian Empire.

4. (1) The Vice-Chancellor shall be such one of the Fellows as the Chancellor may from time to time appoint in this behalf.

(2) Except as provided in sub-sections (3) and (4), he shall hold office for two years from the date of his appointment, and on the expiration of his term of office may be re-appointed.

(3) If a Vice-Chancellor leaves India with or without the intention of returning thereto, he shall thereupon cease to be Vice-Chancellor unless the Chancellor otherwise directs.

(4) shall be deemed to have been appointed the first Vice-Chancellor, and his term of office shall, subject to the provisions of sub-section (3), expire on the day of

5. (1) The following persons shall be Fellows, namely:—

(a) every person who has held the office of Chancellor, and all persons for the time being holding such offices under the Government as the Local Government may, by notification in the official Gazette, specify in this behalf;

(b) persons whom the Chancellor may from time to time appoint by name as being eminent benefactors of the University, or persons distinguished for attainments in Literature, Science or Art, or for zeal in the cause of education; and

(c) such persons, if any, as may from time to time be elected by the Senate of the University and approved by the Chancellor:

Provided that—

(i) the whole number of the Fellows holding office under clauses (a), (b) and (c), exclusive of the Vice-Chancellor, shall never be less than thirty; and

(ii) the number of persons for the time being elected and approved under clause (c) shall never exceed the number for the time being appointed under clause (b).

(2) A person appointed under clause (b), or elected and approved under clause (c), of sub-section (1) does not, by succeeding to an office notified under clause (a) of that sub-section, cease to be a Fellow under clause (b) or clause (c) thereof, as the case may be.

6. (1) The offices specified in Part I of the schedule shall be deemed to have been specified in a notification issued under section 5, sub-section (1), clause (a); and

(2) The persons named in Part II of the schedule shall, except for the purposes of the second clause of the proviso to section 5, sub-section (1), be deemed to be Fellows appointed under clause (b) of sub-section (1) of section 5 or elected and approved under clause (c) of that sub-section.

7. (1) The Chancellor may, with the consent of not less than two-thirds of the members of the Senate present at a meeting specially convened for the purpose, remove any Fellow appointed under clause (b) of sub-section (1) of section 5 or elected and approved under clause (c) of that sub-section; and the Local Government may, by notification in the official Gazette, cancel or amend any notification issued under section 5, sub-section (1), clause (a).

(2) If any Fellow appointed under clause (b) of sub-section (1) of section 5 or elected and approved under clause (c) of that sub-section, and not being a person named in Part II of the schedule, leaves India without the intention of returning thereto, or is absent from India for more than four years, he shall thereupon cease to be a Fellow.

8. (1) The Chancellor, Vice-Chancellor and Fellows for the time being shall form the Senate of the University.

(2) The Senate shall have the entire management of, and superintendence over, the affairs, concerns and property of the University, and shall provide for that management and exercise that superintendence in accordance with the rules for the time being in force under this Act.

9. At every meeting of the Senate the Chancellor, or, in his absence, the Vice-Chancellor, or, in the absence of both, a Fellow chosen by a majority of the Fellows present at the meeting, shall preside as Chairman.

10. (1) Every question which comes before the Senate at a meeting shall be decided by a majority of the votes of the members present:

Provided that no question shall be decided at any such meeting unless ten members at the least, besides the Chairman, are present at the time of the decision.

(2) The Chairman at any such meeting shall have a vote, and, in case of an equality of votes, a second or casting vote.

11. Subject to the rules for the time being in force under this Act, the Senate may from time to time—

(1) appoint, or provide for the appointment of, a Syndicate;

(2) constitute Faculties of Arts, Law, Science and Engineering and, with the previous approval of the Governor-General in Council, of Medicine;

(3) appoint, suspend and remove a registrar;

(4) appoint, suspend and remove, or provide for the appointment, suspension and removal of, examiners, officers and servants of the University;

(5) appoint, or provide for the appointment of, professors and lecturers, and suspend and remove, or provide for the suspension and removal of, professors and lecturers appointed by the Senate.

12. (1) The Syndicate shall be the executive committee of the Senate, and may discharge such functions of the Senate as it may be empowered to discharge by the rules for the time being in force under this Act.

(2) The Vice-Chancellor shall be a member and the chairman of the Syndicate.

13. Subject to the rules for the time being in force under this Act, the Senate may confer on persons who have passed such examinations in the University and fulfilled such other conditions as may be prescribed under this Act—

(a) in the Faculty of Arts, the degrees of Bachelor and Master of Arts;

and, if empowered by the Governor-General in Council in this behalf,—

(b) in the Faculty of Law, the degrees of Bachelor and Doctor of Laws;

(c) in the Faculty of Science, the degrees of Bachelor and Doctor of Science;

(d) in the Faculty of Medicine, the degrees of Bachelor and Doctor of Medicine;

(e) in the Faculty of Engineering, the degrees of Bachelor and Master of Civil Engineering.

14. In the following circumstances, namely:—

(a) if the Senate has been empowered by the Governor-General in Council to confer the degree of Doctor of Laws on persons who have passed such examinations in the University and fulfilled such other conditions as aforesaid, and

(b) if the Vice-Chancellor and not less than two-thirds of the other members of the Syndicate recommend that an honorary degree be conferred on any person, on the ground that he is, in their opinion, by reason of eminent position and attainments, a fit and proper person to receive such a degree, and their recommendation is supported by a majority of the members present at a meeting of the Senate and is confirmed by the Chancellor,

the Chancellor may, on behalf of the Senate, confer on that person the degree of Doctor of Laws without requiring him to undergo any examination.

15. (1) The Senate may charge such reasonable fees for entrance into the University and continuance therein, for admission to the examinations of the University, for attendance at any lectures or classes in connection with the University, and for the degrees to be conferred by the University, as may be imposed by the rules for the time being in force under this Act.

(2) Such fees shall be carried to a General Fee Fund for the payment of expenses of the University under the directions and regulations of the Local Government.

16. (1) The Senate shall as soon as may be after the passing of this Act, and may from time to time thereafter, make rules consistent with this Act touching—

- (a) the mode and time of convening the meetings of the Senate and of transacting business thereat;
 - (b) the appointment, constitution and duties of the Syndicate and the Faculties;
 - (c) the appointment, suspension, removal, duties and remuneration of the registrar, examiners, officers and servants;
 - (d) the appointment, duties and remuneration of professors and lecturers, and the suspension and removal of professors and lecturers appointed by the Senate;
 - (e) the previous course of instruction to be followed by candidates for the examinations of the University;
 - (f) the examinations to be passed and the other conditions to be fulfilled by candidates for degrees; and
 - (g) generally, all matters regarding the University.
- (2) All such rules shall be reduced into writing and sealed with the common seal of the University, and shall,—
- (a) in the case of rules made under clause (e) or clause (f) of sub-section (1), after they have been confirmed by the Local Government and sanctioned by the Governor-General in Council; and,
 - (b) in the case of all other rules, after they have been sanctioned by the Local Government,

be binding on all persons members of the University, or admitted thereto, and on all candidates for degrees.

(3) If, on the expiration of eighteen months from the date on which the University comes into existence, rules have not been made and sanctioned or, as the case may be, made, confirmed and sanctioned, under the foregoing provisions of this section, touching a matter mentioned in sub-section (1), the Local Government may, by notification in the official Gazette, make such rules touching that matter as it thinks fit.

(4) Subject, in the case of rules touching any matter mentioned in clause (e) or clause (f) of sub-section (1), to the sanction of the Governor-General in Council, rules made by the Local Government under sub-section (3) shall be deemed to have been made and sanctioned, or, as

the case may be, made, confirmed and sanctioned under sub-sections (1) and (2).

17. (1) The registrar and every other officer or servant appointed or of the Senate to be remunerated by the Senate shall, for the purposes of the Indian Penal Code, be deemed to be a public servant.

(2) The word "Government" in the definition of "legal remuneration" in section 161 of that Code shall, for the purposes of sub-section (1), be deemed to include the Senate, and sections 162 and 163 of the Code shall be construed as if the words "or with any member of the Senate of the Allahabad University or any examiner of that University" were inserted after the words "with any Lieutenant-Governor."

18. It shall be the duty of the Local Government to require that the proceedings of the University shall be in conformity with this Act and the rules for the time being in force thereunder, and the Local Government may exercise all powers necessary for giving effect to its requisitions in this behalf, and may, among other things, annul, by a notification in the official Gazette, any such proceeding which is not in conformity with this Act and those rules.

19. All appointments made under section 4, all appointments made and elections approved under section 5, sub-section (1), clauses (b) and (c), all degrees conferred under sections 13 and 14, and all rules made under section 16, shall be notified in the local official Gazette, wherein also the record of the proceedings of every meeting of the Senate shall be published.

20. The accounts of the income and expenditure of the University shall be submitted once in every year to the Local Government for such examination and audit as that Government may direct.

THE SCHEDULE.

(See section 6.)

PART I.

Offices to be deemed to have been specified under section 5, sub-section (1), clause (a):—

The office of—

- Bishop of Calcutta;
- Chief Justice of the High Court of Judicature for the North-Western Provinces;
- Chief Secretary to the Government of the North-Western Provinces and Oudh;
- Secretary to the Government of the North-Western Provinces and Oudh in the Public Works Department;
- Commissioner of Allahabad;

Commissioner of Lucknow ;
 Commissioner of Agra ;
 Director of Public Instruction, North-West-
 ern Provinces and Oudh ;
 Principal of the Muir College, Allahabad ;
 Principal of the Queen's College, Benares.

PART II.

Persons to be deemed to have been appointed,
 or to have been elected and approved, as Fellows
 under section 5, sub-section (i), clause (b), or
 clause (c) :—

(Names to be added hereafter.)

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is the establishment of a University at Allahabad.

The great advance in higher education which has of late years taken place in the North-Western Provinces and Oudh, the number of efficient colleges situated in those Provinces which turn out a larger number of students year by year, and the serious strain thereby imposed on the resources of the Calcutta University for the effective examination and careful testing of the merits of candidates from Provinces differing perceptibly in manners, habits and social characteristics—all call for the establishment of a University with power to confer degrees at the capital of the united Provinces.

The number of candidates who matriculated has risen from 60 in 1869 to 208 in 1885, and is almost double the average number that matriculated for the Bombay University during the first ten years of its existence.

The number of undergraduates studying at institutions in the North-Western Provinces and Oudh affiliated with the Calcutta University has nearly doubled within the last five years, and already exceeds that of many of the smaller Universities of Europe. The average number of both M. A. and B. A. degrees has increased by about one-third within the same period, and is greater than was conferred by the Calcutta University for many years after its first establishment.

The materials for the proposed University are thus ample, and it may be expected that its foundation will be followed by a considerable, if not immediate, increase in the number of students who devote themselves to the higher educational course not only in the North-Western Provinces and Oudh, but also in the cognate populations of the Central Provinces and Rajputana.

The 8th June, 1887.

J. W. QUINTON.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill for the better administration of Her Majesty's Indian Marine Service was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 8th June, 1887:

We, the undersigned, Members of the Select Committee to which the Bill for the better

From Registrar, High Court, Calcutta, No. 278, dated 4th February, 1887 [Paper No. 1].

From Acting Chief Secretary to Government, Madras, No. 273, dated 9th February, 1887, and enclosure [Papers No. 2].

From Officiating Secretary to Government, Bengal, No. 974, dated 28th February, 1887, and enclosure [Papers No. 3].

From Secretary to Chief Commissioner, Burma, No. 619—10 N., dated 25th February, 1887 [Paper No. 4].

From Acting Under Secretary to Government, Bombay, No. 1334, dated 2nd March, 1887, and enclosure [Papers No. 5].

From Acting Under Secretary to Government, Bombay, No. 1382, dated 4th March, 1887 [Paper No. 6].

Endorsement by Officiating Under-Secretary to Government, Bengal, No. 1055, dated 4th March, 1887, and enclosure [Papers No. 7].

2. In the preamble we have set forth the provisions of the Indian Marine Service Act, 1884 (47 & 48 Vic., c. 38) in somewhat greater detail.

3. We have added to section 2 a sub-section providing for the contingency of new appointments of gazetted officers, warrant-officers and petty officers being created after the passing of the proposed Act.

4. As the vessels of the Indian Marine may be employed in the suppression of piracy and other like services at times when, under section 6 of the Act of 1884, their crews would not be subject to the Naval Discipline Acts, we have considered it advisable to incorporate in the Bill (sections 5 to 10 of the Bill as revised) some of the provisions of the Naval Discipline Act of 1866 respecting misconduct in the presence of the enemy and communications with the enemy.

5. We have provided (section 36 of the Bill as revised) that offences punishable by ordinary law shall, subject to the provisions of the Indian Marine Service Act, 1884, with respect to the character and severity of punishments, be as a rule punishable under the ordinary law of British India. We have further provided that such offences shall be exclusively cognizable by Criminal Courts (section 41 of the Bill as revised) unless they happen to be offences against good order and discipline punishable, if they were tried, under the ordinary law of British India, with imprisonment for a term not exceeding seven years (section 32 of the Bill as revised).

6. We have made all minor breaches of discipline cognizable exclusively by Indian Marine Courts, and the more serious breaches cognizable concurrently by Indian Marine Courts and Criminal Courts (section 41 of the Bill as revised).

7. We have added to section 53 of the Bill as revised a sub-section providing for the dissolution of an Indian Marine Court when the president dies or is unavoidably absent and the next senior member of the Court is not qualified to take his place.

8. In section 58 of the Bill as revised we have provided that when two or more prisoners are being tried, and the trial of one or some only of them has to be temporarily abandoned by reason of his or their illness, the trial of the other prisoner or prisoners may be continued. We have also provided that, where the illness is insanity, the Court is to proceed, as nearly as circumstances admit, as a Magistrate or Court may proceed under section 466 of the Code of Criminal Procedure.

9. We have inserted a new section (section 64) providing for the transmission of proceedings to the confirming authority, and in section 66 of the Bill as revised we have modified the description of that authority.

10. We have struck out of section 68 of the Bill as revised the words which empowered the Governor-General in Council to make rules of evidence additional to those in the Indian Evidence Act, 1872.

11. We have provided in section 82 of the Bill as revised that the Director of Marine shall be the officer to whom the proceeds of unclaimed property of deceased persons and of the property of deserters are to be remitted.

12. The other alterations are either verbal or in the arrangement of sections, and do not call for remark.

13. The publication ordered by the Council has been made as follows :—

In English.

| <i>Gazette.</i> | | <i>Date.</i> |
|-------------------------------|-----|----------------------|
| Gazette of India ... | ... | 15th January, 1887. |
| Fort Saint George Gazette ... | ... | 1st February, 1887. |
| Bombay Government Gazette ... | ... | 27th January, 1887. |
| Calcutta Gazette ... | ... | 19th February, 1887. |
| Burma Gazette ... | ... | 7th February, 1887. |

In the Vernaculars.

| <i>Province.</i> | | <i>Language.</i> | | <i>Date.</i> |
|------------------|-----|------------------|-----|-------------------|
| Bengal ... | ... | Bengali ... | ... | 26th April, 1887. |
| | | Hindi ... | ... | 22nd March, 1887. |
| | | Uriya ... | ... | 10th March, 1887. |

14. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

G. CHESNEY.

ANDREW R. SCOBLE.

J. B. PEILE.

The 8th June, 1887.

No. II.

THE INDIAN MARINE BILL, 1887.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Title and commencement.
2. Definitions.
3. Procedure on enrolment.
4. General power to make rules.

CHAPTER II.

OFFENCES AND PUNISHMENTS.

Misconduct in the Presence of the Enemy.

5. Misconduct of commanding officer in action.
6. Not pursuing the enemy or not assisting a friend in view.
7. Delaying or discouraging action or service, or deserting post or sleeping on watch.
8. Misconduct of subordinate officers and men in action.

Communications with the Enemy.

9. Corresponding, &c., with the enemy.
10. Improper communication with the enemy.

Neglect of Duty.

11. Neglect of duty.

Mutiny.

12. Mutiny accompanied by violence.
13. Mutiny not accompanied by violence.
14. Inciting to mutiny.
15. Mutinous assembly or uttering seditious words.
16. Concealing traitorous, mutinous or seditious practice, design or words.
17. Striking or using violence to superior officer.

Insubordination.

18. Disobedience or using threatening language to superior officer.

Desertion and Absence without Leave.

19. Desertion.
20. Inducing any person to desert.
21. Breaking out of vessel.
22. Absence without leave.

Miscellaneous Offences.

23. Drunkenness on boardship or on duty.
24. Cruelty or misconduct by officer.
25. Suffering vessel to be lost or imperilled.
26. Unlawful taking of goods on board.
27. Embezzling public stores.
28. Arson.
29. Making false documents.
30. Malingering or misconduct in hospital.
31. Creating disturbance on account of complaints.
32. Offences to the prejudice of good order and discipline not otherwise specified.
33. Not assisting in arresting offenders.
34. Contempt of Court.
35. False evidence.

SECTIONS.

Offences punishable by Ordinary Law.

36. Offences punishable by ordinary law.

Punishments.

37. Schedule of punishments.
38. Regulations as to the infliction of punishments.
39. Scale of punishments.
40. Limitation of time for trials.

CHAPTER III.

JURISDICTION AND POWERS.

41. Offences cognizable by Criminal Courts and Indian Marine Courts respectively.
42. Power to pass sentences.
43. Jurisdiction and powers of commanding officers.
44. Place of trial.
45. Jurisdiction over person ceasing to be subject to Act.
46. Case of person charged with an offence cognizable by a Criminal Court.
47. Case of person charged with an offence cognizable by an Indian Marine Court or commanding officer.
48. Conflict of jurisdiction.
49. Previous conviction or acquittal.
50. Application of Act XV of 1869 to Indian Marine Courts.
51. Powers of Governor-General in Council in respect of sentences.

CHAPTER IV.

INDIAN MARINE COURTS.

Constitution of the Court.

52. Power to convene Indian Marine Court.
53. Composition of Indian Marine Court.

Procedure at the Trial.

54. Place of sitting of Indian Marine Court.
55. Challenge.
56. Oaths.
57. Trial of officers and crew by one Court.
58. Dissolution of Court on illness of prisoner.
59. Re-trial of prisoner after dissolution of Court.
60. Clearing Court.
61. Decision of Court.
62. Summoning witnesses.
63. Summary punishment of certain contempts.

Confirmation of Findings and Sentences.

64. Submission of proceedings to confirming authority.
65. Confirmation of findings and sentences.
66. Confirming authority.
67. Powers of confirming authority.

Evidence.

68. Law of evidence applicable.

Preservation of Proceedings.

69. Preservation of Indian Marine Court proceedings and grant of copies.

Power to make Rules respecting Procedure.

70. Power to make rules respecting procedure.

*The Indian Marine Bill, 1887.**(Chapter I.—Preliminary.—Sections 1-2.)*

CHAPTER V.

SUPPLEMENTAL CRIMINAL PROVISIONS.

Procedure of Criminal Courts beyond British India.

SECTIONS.

71. Procedure of Criminal Courts beyond British India.

Arrest.

72. Arrest of offenders.
-
73. Power of commanding officer.

Execution of Sentences of Indian Marine Courts and Commanding Officers.

74. Commencement of sentences of imprisonment.
-
75. Execution of such sentences.

Savings.

76. Saving of authority of ordinary Courts.
-
77. Saving of rules of service.

Amendment of Acts.

78. Amendment of Act X of 1882, section 54 (Arrest of Deserters).
-
79. Amendment of Chapter VII of the Penal Code (Offences relating to the Army and Navy).

CHAPTER VI.

PROVISIONS OF CIVIL LAW.

Exemption from Process.

80. Exemption from arrest for debt.
-
81. Property which cannot be attached.

Property of Deceased Persons and Deserters.

82. Disposal of property of deceased persons and deserters.

A Bill for the better administration of Her Majesty's Indian Marine Service.

& 48 Vic.,
38. WHEREAS by the Indian Marine Service Act, 1884, it is, among other things, enacted that the Governor-General of India in Council shall have power, subject to the provisions contained in the Indian Councils Act, 1861, as amended by subsequent Acts, at meetings for the purpose of making Laws and Regulations, to make laws for all persons employed or serving in, or belonging to, Her Majesty's Indian Marine Service:

Provided that—

- (a) a law made under that power shall not apply to any offence unless the vessel to which the offender belongs is at the time of the commission of the offence within the limits of Indian waters, which are defined by the said Indian Marine Service Act to include the high seas, between the Cape of Good Hope on the west and the Straits of Magellan on the east, and all territorial waters between those limits; and

- (b) the punishments imposed by any such law for offences shall be similar in character to, and shall not be in excess of, the punishments which may at the time of making the law be imposed for similar offences under the Acts relating to Her Majesty's Navy, except that in the case

of persons other than Europeans or Americans imprisonment for any term not exceeding fourteen years, or transportation for life or any less term, may be substituted for penal servitude;

And whereas it is further provided by the said Indian Marine Service Act that subject to the provisions of that Act a law made thereunder shall be of the same force and effect as an Act of Parliament and shall be taken notice of by all Courts of Justice in the same manner as if it were a Public Act of Parliament;

And whereas in pursuance of the power thus conferred and of all other powers vested in the Governor-General in Council in this behalf it is expedient to make such laws as are mentioned in the said Indian Marine Service Act and to make provision in other particulars for the proper regulation of, and otherwise in relation to, the Indian Marine Service;

And whereas the Secretary of State for India in Council has given his previous approval to the passing of this Act;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title and commencement.

1. (1) This Act may be called the Indian Marine Act, 1887; and

(2) It shall come into force on such date as the Governor-General in Council may, by notification in the Gazette of India, appoint in this behalf.

2. (1) In this Act, unless there is something repugnant in the subject or context,—

(a) "person subject to this Act" means a person who is employed or serves in, or belongs to, the Indian Marine Service, and who, if he is not a gazetted officer, has been enrolled in that service in the manner provided by this Act:

(b) "gazetted officer" means a person who by virtue of his letter of appointment is holding a position in the Indian Marine Service as—

| | |
|---|--|
| Commander, First grade officer, Second grade officer, Third grade officer, | Chief engineer, Engineer, Assistant engineer, or Clerk: |
|---|--|

(c) "warrant-officer" means a person who by virtue of his appointment is holding a position in the Indian Marine Service as—

| | |
|---|--|
| Gunner, Apothecary, Assistant apothecary, Assistant clerk, | Engine-driver, first class, Carpenter, Hospital assistant, or General mess steward: |
|---|--|

(d) "petty officer" means a person who by virtue of his appointment is holding a position in the Indian Marine Service as—

| | |
|---|--|
| Chief syrang, first class, Chief syrang, second class, Ship's steward, Engine-driver, second class, Cook on a salary of not less than fifty rupees per mensem, General mess butler, Syrang of lascars, first class, Syrang of lascars, second class, | Tindal of lascars, first class, Tindal of lascars, second class, Tindal of stokers, first class, Tindal of stokers, second class, Cassaub, first class, Cassaub, second class, or Cook on a salary of less than fifty rupees per mensem: |
|---|--|

*The Indian Marine Bill, 1887.**(Chapter I.—Preliminary.—Sections 3-4.)**(Chapter II.—Offences and Punishments.—Sections 5-8.)*

(e) "superior officer," used with reference to an officer of a rank mentioned in clause (b), clause (c) or clause (d) of this sub-section, means an officer of a rank mentioned before his in any of those clauses, and, used with reference to any other person subject to this Act, means an officer mentioned in any of those clauses:

(f) "commanding officer" means the officer in command of a vessel; whether by special appointment or by the rules or customs of the service, and includes, as regards any persons subject to this Act who are employed otherwise than on board the vessel to which they belong, such officer, if any, as the Governor-General in Council appoints, instead of the commanding officer of that vessel, to discharge the functions of commanding officer with respect to those persons:

(g) "enemy" includes a pirate or rebel:

(h) "Indian Marine Court" means an Indian Marine Court held under this Act:

(i) "Criminal Court" means a Court having ordinary criminal jurisdiction in British India or such a Court established elsewhere by the authority of the Governor-General in Council: and

(j) "prescribed" means prescribed by rules made by the Governor-General in Council.

(a) If an appointment in the Indian Marine Service is created after the passing of this Act, the Governor-General in Council may, by notification published in the Gazette of India at any time after the commencement of this Act, assign to the officer for the time being holding the appointment such place in clause (b), clause (c) or clause (d) of sub-section (r) as he thinks fit, and thereupon that officer shall for all the purposes of this Act be deemed to be mentioned in that place, and to be a gazetted officer, warrant-officer or petty officer, as the case may be, and to be the superior officer of any officer mentioned after him in any of the clauses aforesaid, and of any person subject to this Act who is not mentioned in any of those clauses.

3. A person to be enrolled in the Indian Marine Service shall be

Procedure on enrolment. brought on to the quarter-deck or other suitable place on boardship or on shore, and the commanding or other prescribed officer shall cause to be read and explained to him the prescribed portions of this Act, and of the rules and conditions of service; and if the officer is satisfied that the person understands those portions he will administer to him an oath of allegiance in the prescribed form, and cause him to sign or, if he cannot write, to affix his mark to the prescribed roll.

4. In addition to any other rules which may be made under this Act,

General power to make rules. the Governor-General in Council may, by notification in the Gazette of India, make rules consistent with this Act for the guidance of officers, whether military, Indian Marine, civil or political, in all matters connected with its enforcement.

CHAPTER II.

OFFENCES AND PUNISHMENTS.

Misconduct in the Presence of the Enemy.

Misconduct of commanding officer in action. 5. If a commanding officer—

- (i) upon signal of battle, or on sight of a vessel of an enemy which it is his duty to engage, does not use his utmost exertion to bring his vessel into action, or
- (ii) does not during an action, in his own person and according to his rank, encourage his inferior officers and men to fight courageously, or,
- (iii) when capable of making a successful defence, surrenders his vessel to the enemy, or
- (iv) in time of action improperly withdraws from the fight,

he shall,—

- (a) if he has acted from cowardice, suffer penal servitude or such other punishment as is hereinafter mentioned;
- (b) if he has acted from negligence, or through other default, be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Not pursuing the enemy or not assisting a friend in view. 6. If any officer subject to this Act—

- (i) forbears to pursue the chase of any enemy beaten or flying, or
- (ii) does not relieve and assist a known friend in view to the utmost of his power, or
- (iii) improperly forsakes his station,

he shall—

- (a) if he has acted from cowardice, suffer penal servitude or such other punishment as is hereinafter mentioned;
- (b) if he has acted from negligence, or through other default, be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Delaying or discouraging action or service, or deserting post or sleeping on watch. 7. If any person subject to this Act,—

- (i) when any action or service is commanded, presumes to delay or discourage the action or service upon any pretence whatever, or
- (ii) in the presence or vicinity of the enemy, deserts his post or sleeps upon his watch,

he shall suffer penal servitude or such other punishment as is hereinafter mentioned.

8. If any person subject to this Act, other than a commanding officer, does not, when ordered to prepare for action, or during an action, use his utmost exertion to carry the orders of his superior officer into execution, he shall,—

- (a) if he has acted from cowardice, suffer penal servitude or such other punishment as is hereinafter mentioned;
- (b) if he has acted from negligence, or through other default, be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

*The Indian Marine Bill, 1887.**(Chapter II.—Offences and Punishments.—Sections 9-22.)**Communications with the Enemy.*

Corresponding, &c., with the enemy. 9. If any person subject to this Act—

- (i) treacherously holds correspondence with or gives intelligence to the enemy, or
 - (ii) fails to make known to the proper authorities any information which he may have received from the enemy, or
 - (iii) relieves the enemy with any supplies,
- he shall suffer penal servitude or such other punishment as is hereinafter mentioned.

Improper communication with the enemy. 10. If any person subject to this Act holds, without any treacherous intention, any improper communication with the enemy, he shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Neglect of Duty.

Neglect of duty. 11. If a person subject to this Act deserts his post or sleeps upon his watch, or negligently performs the duty imposed on him, he shall suffer imprisonment or such other punishment as is hereinafter mentioned.

Mutiny.

Mutiny accompanied by violence. 12. Where a mutiny is accompanied by violence, a person subject to this Act who joins therein shall suffer death or such other punishment as is hereinafter mentioned ; and

a person subject to this Act who does not use his utmost exertions to suppress the mutiny shall,—

- (a) if he has acted traitorously, suffer death or such other punishment as is hereinafter mentioned ;
- (b) if he has acted from cowardice, suffer penal servitude or such other punishment as is hereinafter mentioned ;
- (c) if he has acted from negligence, be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Mutiny not accompanied by violence. 13. Where a mutiny is not accompanied by violence, a ringleader thereof, being a person subject to this Act, shall suffer death or such other punishment as is hereinafter mentioned ; and all other persons subject to this Act who join in the mutiny, or do not use their utmost exertions to suppress it, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

Inciting to mutiny. 14. A person subject to this Act who endeavours to seduce any other person subject to this Act from his duty or allegiance to Her Majesty, or endeavours to incite him to commit any act of mutiny, shall suffer death or such other punishment as is hereinafter mentioned.

Mutinous assembly or uttering seditious words. 15. A person subject to this Act who makes or endeavours to make any mutinous assembly, or leads or incites any other person to join in any mutinous assembly, or utters any words of sedition or mutiny, shall suffer penal

servitude or such other punishment as is hereinafter mentioned.

Concealing traitorous, mutinous or seditious practice, design or words. 16. A person subject to this Act who wilfully conceals any traitorous or mutinous practice or design, or any seditious or mutinous words spoken against Her Majesty, or any practice, design or words tending to the hindrance of the service, shall suffer penal servitude or such other punishment as is hereinafter mentioned.

Striking or using violence to superior officer. 17. A person subject to this Act who strikes or attempts to strike, or uses or attempts to use any violence against, his superior officer, being in the execution of his office, or otherwise, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Insubordination.

Disobedience or using threatening language to superior officer. 18. A person subject to this Act who wilfully disobeys any lawful command of his superior officer, or uses threatening or insulting language, or behaves with contempt, to his superior officer, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Desertion and Absence without Leave.

Desertion. 19. A person subject to this Act who—

- (i) absents himself from his vessel or from the place where his duty requires him to be, with the intention of not returning to that vessel or place ; or
- (ii) at any time and under any circumstances, when absent from his vessel or place of duty, does any act which shows that he has an intention of not returning to that vessel or place ;

shall be deemed to have deserted, and shall suffer penal servitude or such other punishment as is hereinafter mentioned ;

and in every such case he shall forfeit all pay, bounty, salvage, prize-money and allowances which may have been earned by him, and all annuities, pensions, gratuities, medals and decorations which may have been granted to him, and also all clothes and effects which he may have left on board the vessel or at the place from which he has deserted, unless it is otherwise directed by the Court by which he is tried or by the Governor-General in Council.

Inducing any person to desert. 20. A person subject to this Act who endeavours to seduce any other person subject to this Act to desert shall suffer imprisonment or such other punishment as is hereinafter mentioned.

Breaking out of vessel. 21. A person subject to this Act who, without being guilty of desertion, improperly leaves his vessel or place of duty shall suffer imprisonment or such other punishment as is hereinafter mentioned.

Absence without leave. 22. A person subject to this Act who, without being guilty of desertion or of improperly leaving his

*The Indian Marine Bill, 1887.**(Chapter II.—Offences and Punishments.—Sections 23-35.)*

vessel or place of duty, is absent without leave shall suffer imprisonment for any period not exceeding ten weeks or such other punishment as the circumstances of the case may require.

Miscellaneous Offences.

23. A person subject to this Act who is guilty of any drunkenness on boardship or on duty shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

24. An officer subject to this Act who is guilty of cruelty, or of any scandalous or fraudulent conduct, or of any other conduct unbecoming the character of an officer, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

25. A person subject to this Act who designedly or negligently, or by any default, loses, strands or hazards, or suffers to be lost, stranded or hazarded, any vessel of the Indian Marine Service shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

26. An officer in command of an Indian Marine Service vessel who receives on board, or permits to be received on board, the vessel any goods or merchandise whatsoever, other than for the sole use of the vessel, except gold, silver or jewels, and except goods and merchandise, belonging to any merchant or on board any vessel, which may be shipwrecked or in imminent danger either on the sea or in some port, creek, harbour or river, for the purpose of preserving them for their proper owners, or except such goods or merchandise as he may at any time be ordered to take or receive on board by order of the Government or his superior officer, shall be dismissed from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

27. A person subject to this Act who wastefully expends, embezzles or fraudulently buys, sells or receives any ammunition, provisions or other public stores, or knowingly permits any such wasteful expenditure, embezzlement or fraudulent purchase, sale or receipt, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

28. A person subject to this Act who unlawfully sets fire to any dock-yard, victualling yard, steam-factory yard, arsenal, magazine, building or stores, or to any ship, boat or other craft or furniture thereunto belonging, not being the property of an enemy, shall suffer penal servitude or such other punishment as is hereinafter mentioned.

29. A person subject to this Act who knowingly makes or signs a false muster or record or other official document, or who commands, counsels or procures the making or signing thereof, or who aids or abets any other

person in the making or signing thereof, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

30. A person subject to this Act who wilfully does any act or wilfully disobeys any order, whether in hospital or elsewhere, with intent to produce or to aggravate any disease or infirmity or to delay his cure, or who feigns any disease, infirmity or inability to perform his duty, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

31. A person subject to this Act who has any cause of complaint, either upon the ground of the unwholesomeness of the victuals or upon any other ground, shall quietly make the same known to his commanding officer, and that officer shall inquire into the complaint and shall, as far as he is able, cause the same to be presently remedied, or shall report the case to the Director of Marine; and any person subject to this Act who, upon any pretence whatever, attempts to stir up any disturbance on any such ground shall suffer imprisonment or such other punishment as is hereinafter mentioned.

32. A person subject to this Act who is guilty of any act, disorder or neglect, to the prejudice of good order and discipline, not hereinbefore specified, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Provided that if such act, disorder or neglect constitutes an offence punishable under the law of British India with imprisonment for a term which may exceed seven years, the person guilty thereof shall not be tried under this Act as for an offence punishable under this section.

33. A person subject to this Act who does not use his utmost exertion to detect, arrest and bring to punishment all offenders against this Act, and does not assist the officers appointed for that purpose, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

34. A person subject to this Act who, being duly summoned or ordered to attend as a witness before an Indian Marine Court or a commanding officer exercising jurisdiction under this Act, or to produce any document in his power or control before such a Court or officer, refuses or neglects to attend to give his evidence upon oath or to produce the document, or behaves with contempt to the Court or officer, shall suffer imprisonment which may extend to three months in the case of such refusal or neglect and to one month in the case of such contempt.

35. A person subject to this Act who, when examined on oath before an Indian Marine Court or a commanding officer exercising jurisdiction under this Act, intentionally gives false evidence, shall suffer imprisonment for a term which may extend to seven years.

The Indian Marine Bill, 1887.

(Chapter II.—Offences and Punishments.—Sections 36-40. Chapter III.—Jurisdiction and Powers.—Section 41.)

Offences punishable by Ordinary Law.

36. If a person subject to this Act is guilty of any criminal offence which if committed in British India would be punishable by the law of British India, he shall, subject to the other provisions of this Act, be liable to the same punishment as might for the time being be awarded in British India by any ordinary criminal tribunal competent to try him if the offence had been committed in British India:

Provided that, except as authorised by the Indian Marine Service Act, 1884, and by this Act, the punishment awarded for the offence shall not be dissimilar in character to or in excess of the punishment which may at the time of the passing of this Act be imposed for a similar offence under the Acts relating to Her Majesty's Navy.

Punishments.

37. (r) The following punishments may be inflicted under this Act:—

- (a) death;
- (b) penal servitude;
- (c) dismissal with disgrace from the Indian Marine Service;
- (d) imprisonment;
- (e) dismissal from the Indian Marine Service;
- (f) loss of seniority as an officer for a specified time or otherwise;
- (g) dismissal from the ship to which the offender belongs;
- (h) severe reprimand, or reprimand;
- (i) disrating a warrant-officer or petty officer or any other person below that rank;
- (j) forfeiture of pay, bounty, salvage, prize-money and allowances earned by, and of all annuities, pensions, gratuities, medals and decorations granted to, the offender, or of any one or more of the above particulars; also, in the case of desertion, of all clothes and effects left by the deserter on board the vessel to which he belongs.

(2) Each of the above punishments shall be deemed to be inferior in degree to every punishment preceding it in the above scale.

38. The following regulations shall apply to the infliction of punishments:—

(1) The punishment of penal servitude may, except when otherwise provided by this Act, be inflicted for the term of life or for any other term not less than four years.

(2) In the case of persons other than Europeans or Americans, transportation for life or for any term not less than four years, or imprisonment for any term not exceeding fourteen years, shall be substituted for penal servitude.

(3) The punishment of penal servitude or of transportation, or of imprisonment for more than two years when substituted for penal servitude under the provisions of this Act, shall in all cases involve dismissal from the Indian Marine Service, with or without disgrace, as the prescribed authority may direct.

(4) Dismissal with disgrace shall involve in all cases forfeiture of all pay, bounty, salvage, prize-money and allowances earned by, and of all annuities, pensions, gratuities, medals and decorations granted to, the offender, and an incapacity to serve the Government again in any capacity.

(5) A sentence of dismissal with disgrace may in any case be accompanied by a sentence of imprisonment.

(6) Except as otherwise provided by this Act, a sentence of imprisonment passed otherwise than under clause (2) of this section may extend to two years.

(7) A sentence of imprisonment may be accompanied by a direction that the imprisonment shall be rigorous for the whole or any part of the term thereof.

(8) When a sentence of imprisonment is passed on a warrant-officer or petty officer or any other person below that rank, it may be accompanied by a direction disrating the officer or person.

(9) A sentence of imprisonment shall in all cases be accompanied by forfeiture of pay and allowances during the imprisonment.

39. Subject to the foregoing regulations and the other provisions of this Act, where any punishment is specified by this Act as the penalty for an offence, and it is further declared that another punishment may be awarded in respect of the same offence, the expression "other punishment" shall be deemed to comprise any one or more of the punishments inferior in degree to the specified punishment according to the scale set forth in section 37.

40. No person, unless he is an offender who has avoided arrest or fled from justice, shall be tried or punished in pursuance of this Act for any offence committed by him unless the trial takes place within three years from the commission of the offence, or within one year after the return of the offender to British India when he has been absent from British India during that period of three years.

CHAPTER III.

JURISDICTION AND POWERS.

41. Subject to the provisions of this Act and as respects Criminal Courts, Criminal Courts and Indian Marine Courts respectively, subject to the law relating to criminal procedure for the time being applicable to those Courts, Criminal Courts and Indian Marine Courts or both shall have jurisdiction in respect of the offences punishable under this Act as specified in the following table:—

| Section of this Act. | Marginal note. | Courts having jurisdiction. |
|----------------------|--|---|
| Section 5 | Misconduct of commanding officer in action. | Criminal Courts and Indian Marine Courts. |
| " 6 | Not pursuing the enemy or not assisting a friend in view. | |
| " 7 | Delaying or discouraging action or service or deserting post or sleeping on watch. | |
| " 8 | Misconduct of subordinate officers and men in action. | |
| " 9 | Corresponding, &c., with the enemy. | |
| " 10 | Improper communication with the enemy. | Indian Marine Courts. |
| " 11 | Neglect of duty. | |

*The Indian Marine Bill, 1887.**(Chapter III.—Jurisdiction and Powers.—Sections 42-49.)*

| Section of this Act. | Marginal note. | Courts having jurisdiction. |
|----------------------|---|---|
| Section 12 | Mutiny accompanied by violence. | Criminal Courts and Indian Marine Courts. |
| " 13 | Mutiny not accompanied by violence. | |
| " 14 | Inciting to mutiny. | |
| " 15 | Mutinous assembly or uttering seditious words. | |
| " 16 | Concealing traitorous, mutinous or seditious practice, design or words. | Indian Marine Courts. |
| " 17 | Striking or using violence to superior officer. | |
| " 18 | Disobedience or using threatening language to superior officer. | |
| " 19 | Desertion. | Criminal Courts and Indian Marine Courts. |
| " 20 | Inducing any person to desert. | |
| " 21 | Breaking out of vessel. | |
| " 22 | Absence without leave. | Indian Marine Courts. |
| " 23 | Drunkenness on boardship or on duty. | |
| " 24 | Cruelty or misconduct by officer. | |
| " 25 | Suffering vessel to be lost or imperilled. | Criminal Courts and Indian Marine Courts. |
| " 26 | Unlawful taking of goods on board. | |
| " 27 | Embezzling public stores. | |
| " 28 | Arson. | Indian Marine Courts. |
| " 29 | Making false documents. | |
| " 30 | Malingering or misconduct in hospital. | |
| " 31 | Creating disturbance on account of complaints. | Criminal Courts and Indian Marine Courts. |
| " 32 | Offences to the prejudice of good order and discipline not otherwise specified. | |
| " 33 | Not assisting in arresting offenders. | |
| " 34 | Contempt of Court. | Criminal Courts. |
| " 35 | False evidence. | |
| " 36 | Offences punishable by ordinary law. | |

Power to pass sentences.

42. Subject as aforesaid—

(a) a Criminal Court may pass a sentence of death, penal servitude, transportation or imprisonment; and

(b) an Indian Marine Court may pass any sentence authorised by this Act except a sentence of death, penal servitude or transportation or of imprisonment for a term exceeding two years.

43. (1) An offence triable by an Indian Marine Court and committed by a person other than a gazetted officer may, under such regulations as the Governor-General in Council may make, be summarily tried and punished by the commanding officer of the offender.

(2) Subject to the provisions of this Act and to such restrictions as the Governor-General in Council may impose, a commanding officer may pass a sentence of imprisonment for a period not exceeding three months on an offender below the position of petty officer, and may disrate any warrant-officer or petty officer or any other person below that rank.

44. A person subject to this Act who is accused of an offence to which this Act applies may be tried and punished for the offence by a Criminal Court in any place where he may happen to be in the same manner as if the offence had been committed in that place.

45. Where such an offence has been committed by any person while subject to this Act he may be taken into custody and be tried and punished for the offence, although he has ceased to be subject to this Act, in like manner as he might have been taken into custody and tried and punished if he had continued to be so subject.

46. When a person subject to this Act is accused of an offence in respect of which a Criminal Court has jurisdiction over him under this Act or otherwise, the following rules shall apply, namely:—

(a) any person subject to this Act shall, on application made to him by the Court, assist in arresting and securing the accused, and the commanding officer shall, if so required by the Court, deliver the accused to the Court;

(b) when no requisition is made under clause (a), the commanding officer may, if he thinks fit, place the accused in custody with a view to delivering him up to such Criminal Court as appears to him most convenient in all the circumstances of the case.

47. When a person subject to this Act is accused of an offence in respect of which an Indian Marine Court or a commanding officer has jurisdiction under this Act, and that person is within the jurisdiction of any civil, political or police officer, that officer shall, upon an application to that effect made to him by the commanding officer of that person or any prescribed authority, aid in the arrest of the person and deliver him when arrested into such custody as the commanding officer or the prescribed authority may require.

48. When an Indian Marine Court or commanding officer under this Act, and a Criminal Court under this Act or otherwise, have concurrent jurisdiction in respect of an offence, and there is a difference of opinion as to the tribunal before which the person accused of the offence should be proceeded against, either tribunal shall, on the requisition of the other, stay proceedings pending a reference to the Governor-General in Council, whose order as to the tribunal before which the proceedings are to be had shall be final.

49. An offender shall not be tried by an Indian Marine Court or by his commanding officer for any offence of which he has been convicted or acquitted by a Criminal Court or an Indian Marine Court or, in exercise of the powers conferred by section 43, by his commanding officer.

*The Indian Marine Bill, 1887.**(Chapter III.—Jurisdiction and Powers.—Sections 50-51.)**(Chapter IV.—Indian Marine Courts.—Sections 52-57.)*

50. Where a person liable to be tried by an Indian Marine Court under this Act is in confinement in pursuance of a sentence of a Criminal Court, the Director of Marine or other prescribed officer may make an order in the form in Schedule B to the Prisoners' Testimony Act, 1869, directed to the officer in charge of the place in which the person is confined, and the provisions of that Act with respect to compliance with any order made thereunder shall, so far as they can be made applicable, apply in the case of any order made under this section.

51. The Governor-General in Council may suspend, annul or modify any sentence passed by an Indian Marine Court or a commanding officer under this Act, or substitute a punishment inferior in degree for the punishment involved in any such sentence, or remit the whole or any portion of the punishment involved in any such sentence, or remit the whole or any portion of any punishment into which the punishment involved in any such sentence has been commuted; and any sentence so modified shall, subject to the provisions of this Act, be valid, and shall be carried into execution as if it had been originally passed with such modification by the Court or officer, but so that the punishment involved in any sentence be not increased by any such modification.

CHAPTER IV.

INDIAN MARINE COURTS.

Constitution of the Court.

52. (1) The following authorities shall have power to convene Indian Marine Courts, namely:—

- (a) the Governor-General in Council;
- (b) the Director of Marine;
- (c) an officer empowered in that behalf by warrant of the Governor-General in Council:

Provided that an Indian Marine Court assembled for the trial of a gazetted officer shall be convened only by, or with the previous sanction of, the Governor-General in Council.

(2) When a ship or ships is or are detached on separate service, and when immediate example is necessary, and without detriment to the public service reference cannot be made to superior authority, the officer in command of the ship or ships may, without warrant, convene an Indian Marine Court for the trial of any person under his command being subject to this Act and below the rank of a gazetted officer.

53. (1) An Indian Marine Court shall consist of a president and not less than two or more than four other members of rank not inferior to that of first grade officer, as may be ordered by the convening authority:

Provided that an Indian Marine Court convened under section 52, sub-section (2), may be composed of the officer convening the same as president and the two graded officers next in seniority available for the duty.

(2) The president of an Indian Marine Court for the trial of a commander shall always be a commander, and two at least of the other officers composing the Court shall be commanders.

(3) The president of an Indian Marine Court for the trial of any person below the grade of commander, except an Indian Marine Court convened under section 52, sub-section (2), shall be a commander.

(4) A person acting as prosecutor shall not be a member of the Court.

(5) An officer convening an Indian Marine Court shall not sit thereon except as permitted by the proviso to sub-section (1).

(6) The president and the other members of every Indian Marine Court shall be named by the authority convening the same.

(7) When an Indian Marine Court after the commencement of the trial is reduced to a less number than three members it shall be deemed to be dissolved.

(8) In the case of the death or unavoidable absence of the president of an Indian Marine Court the next senior member of the Court, if qualified under sub-section (2) or sub-section (3), as the case may be, shall take the place of the president without special appointment as such.

(9) If such next senior member is not qualified as aforesaid, the Court shall be deemed to be dissolved.

Procedure at the Trial.

54. An Indian Marine Court shall be held on board one of Her Majesty's Indian Marine vessels or on land.

55. As soon as an Indian Marine Court is assembled the names of the members of the Court shall be read over to the prisoner, who shall be asked if he objects to being tried by any of them; if the prisoner objects to any member, the objection shall be decided by the Court; if the objection is allowed, the place of the member objected to shall be filled up by the officer next in seniority available for the duty who is not on the Court, subject to the regulations contained in section 53, sub-sections (2), (3), (4) and (5):

Provided that where the Court is composed as in the proviso to section 53, sub-section (1), and no officer qualified under that section is available to take the place of the officer objected to, the Court shall, after recording the objection, proceed with the trial in like manner as if the objection had been disallowed.

56. (1) Before an Indian Marine Court proceeds to try a prisoner an oath shall be made by every member of the Court in the prescribed manner.

(2) An oath shall be made in the prescribed manner by any person who gives evidence or acts as an interpreter before an Indian Marine Court.

57. When no specific charge is made against any person subject to this Act for, or in respect or in consequence of, the wreck, loss, destruction or capture of any vessel in the Indian Marine Service, all the officers and crew

*The Indian Marine Bill, 1887.**(Chapter IV.—Indian Marine Courts.—Sections 58-69.)*

of the vessel may, if the authority convening the Court thinks fit, be tried together before one and the same Indian Marine Court, and any of them, when upon his trial, may be called upon to give evidence on oath touching any of the matters then under inquiry, but no person shall be obliged to give any evidence which may tend to criminate himself.

58. (1) If by reason of the illness of the prisoner before the finding it is impossible to continue the trial, an Indian Marine Court shall be deemed to be dissolved:

Provided that, where more prisoners than one are being tried and the trial of only one or some of them is rendered impossible by illness, the Court may, if it sees fit, continue the trial of the other or others, and, where the Court so continues the trial, it shall be deemed to have been dissolved only with respect to the prisoner or prisoners whose illness caused the continuance of his or their trial to be impossible.

(2) When the illness with which a prisoner is affected is insanity, the Court shall proceed, as nearly as circumstances admit, in the same manner as a Magistrate or Court may proceed, under section 466 of the Code of Criminal Procedure, 1882, when an accused person is found to be of unsound mind and incapable of making his defence.

59. Subject to the provisions of the last foregoing section, where an Indian Marine Court is dissolved under that section or section 53, sub-section (7) or sub-section (9), the proceedings are null and void, and the prisoner may be tried before another Indian Marine Court on the same charge or charges.

60. The president may, on any deliberation among the members, cause an Indian Marine Court to be cleared of all other persons.

61. Every decision of an Indian Marine Court shall be passed by a majority of votes, and where there is an equality of votes the president shall have a second or casting vote:

Provided that if there is an equality of votes on the finding the decision shall be in favour of the prisoner.

62. (1) Every person who may be required to give evidence or to produce a document before an Indian Marine Court shall be summoned in the prescribed manner.

(2) A summons issued under this section may be sent to any officer exercising magisterial powers within whose jurisdiction the person summoned may be or resides, and the officer shall give effect to the summons as if the witness were required to attend in his Court.

63. When a person subject to this Act who, being duly summoned or ordered to attend as a witness before an Indian Marine Court, behaves with contempt to the Court, the Court, if it thinks fit, instead of reserving him for trial by another Court for an offence under section 34, may, by order under the hand of the president, sentence him to imprisonment for a term which may extend to one month.

Confirmation of Findings and Sentences.

64. (1) The president of an Indian Marine Court shall date and sign the proceedings of the Court and submit them, as soon as possible after their completion, to the confirming authority.

(2) If the Court has made a recommendation to mercy, the recommendation shall be recorded and submitted to the confirming authority as part of the proceedings.

65. A finding or sentence of an Indian Marine Court shall not be valid except in so far as it may be confirmed by the confirming authority.

66. (1) The confirming authority shall ordinarily be the authority convening the Court.

(2) But if the Court was convened for the trial of a gazetted officer with the previous sanction of the Governor-General in Council, or if, in the case of a Court convened for the trial of any other person subject to this Act, the Governor-General in Council is of opinion that the authority convening the Court cannot act, or cannot conveniently act, as the confirming authority, the confirming authority shall be the Governor-General in Council.

(3) The fact that the Governor-General in Council has acted as the confirming authority with respect to any finding or sentence shall be conclusive proof that he was the proper confirming authority with respect thereto.

67. (1) The confirming authority may send back the finding and sentence of an Indian Marine Court, or either of them, for revision; and, on the finding or sentence being sent back, the Court may, if so directed by the confirming authority, receive additional evidence.

(2) Where the finding only is sent back for revision, the Court may revise the sentence also.

(3) The confirming authority may, in confirming the sentence of an Indian Marine Court,—

- (a) reduce the punishment thereby awarded, or commute that punishment to any other punishment of inferior degree to which the offender might have been sentenced by the Court;
- (b) suspend for such time as seems expedient the execution of the sentence;
- (c) if the finding or sentence is informally expressed, vary the form thereof, or, if the sentence is invalid, substitute a valid sentence therefor.

Evidence.

68. The Indian Evidence Act, 1872, subject to such modifications therein as the Governor-General in Council may, by notification in the Gazette of India, direct, shall apply to all proceedings before Indian Marine Courts.

Preservation of Proceedings.

69. (1) The proceedings of all Indian Marine Courts shall be preserved in the office of the Director of Marine for not less than seven years in the case of

*The Indian Marine Bill, 1887.**(Chapter IV.—Indian Marine Courts.—Section 70. Chapter V.—Supplemental Criminal Provisions.—Section 71-76.)*

the trial of a gazetted officer, or than three years in the case of any other person.

(2) Any person tried by an Indian Marine Court shall be entitled, on demand at any time after the confirmation of the finding and sentence of the Court and before the proceedings are destroyed, to obtain from the officer or person having the custody of the proceedings a copy thereof, upon payment for the same at the prescribed rate.

Power to make Rules respecting Procedure.

70. (1) The Governor-General in Council may make rules to regulate the procedure of Indian Marine Courts, and for the purpose of carrying this Act into execution, so far as relates to the investigation, trial and punishment of offences triable by those Courts.

(2) The Governor-General in Council may by any such rule confer on an Indian Marine Court any power (other than a power to try an accused person or pass a sentence) conferred on a Court of original criminal jurisdiction by the Code of Criminal Procedure, 1882.

CHAPTER V.

SUPPLEMENTAL CRIMINAL PROVISIONS.

Procedure of Criminal Courts beyond British India.

71. The law relating to criminal procedure for the time being in force in British India shall, subject to such modifications as the Governor-General in Council, by notification in the Gazette of India, directs, apply to all proceedings under this Act in Criminal Courts beyond the limits of British India.

Arrest.

72. The following rules shall apply to persons subject to this Act when charged with offences under this Act:—

(1) Every such person shall be placed in custody, but no person shall be detained in custody longer than is necessary for the purposes of justice.

(2) "Custody" means, according to the usage of the service, the putting of the offender under arrest or the putting him in confinement.

(3) Any officer, or, if more officers than one are present, the senior of them, may order into custody any other person of inferior rank subject to this Act.

(4) The charge made against every person taken into custody shall, without unnecessary delay, be investigated by his commanding officer or other prescribed authority; and, as soon as may be, proceedings shall be taken for punishing the offender or discharging him from custody.

73. A commanding officer shall, upon an investigation being made into a charge against a person subject to this Act and under his command of having committed an offence under this Act, dismiss the charge if he thinks that it ought not to be proceeded with;

but when he thinks the charge ought to be proceeded with he shall, subject to the provisions of this Act, take steps without delay for bringing the offender to trial.

Execution of Sentences of Indian Marine Courts and Commanding Officers.

74. (1) Every term of imprisonment awarded in pursuance of the sentences of imprisonment of an Indian Marine Court or of a commanding officer exercising jurisdiction under this Act shall, except as provided in sub-section (2), be deemed to commence on the day on which the original sentence was signed by the president of the Court or pronounced by the commanding officer.

(2) When a person already undergoing a sentence of penal servitude, transportation or imprisonment is sentenced by an Indian Marine Court to imprisonment, that imprisonment shall commence at the expiration of the penal servitude, transportation or imprisonment to which he has previously been sentenced:

Provided that when, under this sub-section, at the expiration of a term of imprisonment to which such person has been sentenced by an Indian Marine Court, another term of imprisonment to which he has been similarly sentenced commences, and the aggregate term of imprisonment to which he would be thus liable would, as reckoned from the commencement of such imprisonment, exceed two years, so much of that term as is in excess of two years shall be deemed to be remitted.

75. (1) A person sentenced by an Indian Marine Court, or by a commanding officer exercising jurisdiction under this Act, to imprisonment shall be detained in the prescribed custody until he is transferred to a prison.

(2) A person sentenced as aforesaid shall, as soon as may be practicable, be transferred to a prison in British India, and shall be delivered over with a warrant of commitment in the prescribed form signed by the prescribed officer to the officer in charge of that prison.

(3) A person transferred to a prison under sub-section (2) shall thereafter be dealt with in all respects as if he were detained in that prison under a sentence of a Criminal Court:

Provided that—

(a) when he is a person sentenced to imprisonment by his commanding officer, the commanding officer, or the Director of Marine, may at any time by order in writing direct that he be discharged;

(b) the Director of Marine or any commanding officer may, by order in writing, direct that any person so transferred shall be delivered over to the prescribed custody for the purpose of being brought before an Indian Marine Court either as a witness or for trial or otherwise, and that he shall again be transferred to the prison.

Savings.

76. Except as expressly provided by this Act, nothing in this Act shall affect the jurisdiction or powers of any Court of criminal jurisdiction.

The Indian Marine Bill, 1887.

(Chapter V.—Supplemental Criminal Provisions.—Sections 77-79. Chapter VI.—Provisions of Civil Law.—Sections 80-82.)

77. Nothing in this Act shall affect any rules, regulations, conditions or customs of the Indian Marine Service now or hereafter in force under which any person may be liable—

Saving of rules of service.

(a) to dismissal, loss of seniority, disrating, forfeiture or stoppages; or

(b) to any restriction not amounting to custody, or any deprivation of indulgence or additional duty, imposed in the way of discipline.

Amendment of Acts.

X of 1882.

78. In the Code of Criminal Procedure, 1882, section 54, after the words "Army or Navy" the following shall be inserted, namely:—

Amendment of Act X of 1882, section 54 (Arrest of Deserters):

"or of belonging to Her Majesty's Indian Marine Service and being illegally absent from that service."

XLV of 1860.

Amendment of Chapter VII of the Penal Code (Offences relating to Army and Navy):

79. After section 138 of the Indian Penal Code the following section shall be inserted, namely:—

"138A. The foregoing sections of this Chapter shall apply as if Her Majesty's Indian Marine Service were comprised in the Navy of the Queen."

CHAPTER VI.

PROVISIONS OF CIVIL LAW.

Exemption from Process.

80. (1) A person below the position of gazetted officer shall not, while subject to this Act, be liable to be taken out of the Indian Marine Service by any process, execution or order of any Court of law, or otherwise, or be compelled to appear in person before any Court of law except in respect of the following matters, or one of them, that is to say:—

Exemption from arrest for debt.

(a) on account of a criminal charge or conviction;

(b) on account of a decree for money, when the amount exceeds three hundred rupees over and above the costs of the suit.

(2) The Judge of any such Court may examine into any complaint made by any such person, or his superior officer, of the arrest of the person contrary to the provisions of this section, and may by order under his hand discharge the person, and award reasonable costs to the complainant, who may recover those costs as he might have recovered costs awarded to him by a decree against the person obtaining the process.

81. The clothes, equipment or arms of a person subject to this Act shall not be seized, nor shall the pay and allow-

Property which cannot be attached.

ances or any part thereof of any such person below the position of a gazetted officer be attached, in execution of any decree or order enforceable against him by any Court of Civil Judicature.

Property of Deceased Persons and Deserters.

82. The following rules are enacted respecting the disposal of the property of any person subject to this Act who dies or deserts:—

Disposal of property of deceased persons and deserters.

(1) The commanding officer shall secure all the moveable property which is on the spot and cause an inventory thereof to be made.

(2) In the case of a deceased person, if his representative is on the spot and gives security for the payment of the ship and service debts of the deceased, the commanding officer shall deliver over the property to that representative.

(3) In the case of a deceased person, if the property is not dealt with under clause (2), and in the case of every deserter, the commanding officer shall cause the property to be sold by public auction, and from the proceeds of the sale shall pay the ship and service debts and, in the case of a deceased person, the expenses of his funeral ceremonies.

(4) The surplus, if any, shall in the case of a deceased person be paid to his representative.

(5) In the event of no claim for the surplus of a deceased person's estate being established within twelve months after his death, and immediately after the sale of the effects of a deserter, the amount remaining in the hands of the commanding officer shall be remitted to the Director of Marine.

(6) Property deliverable or money payable to the representative of a deceased person under this section may, if the value or amount thereof does not exceed one thousand rupees and the Director of Marine or the prescribed officer thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it, or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title; and such delivery or payment shall be a full discharge to the person ordering or making the same and to the Secretary of State for India in Council from all further liability in respect of the property or money; but nothing in this section shall affect the rights of any executor or administrator or other representative or of any creditor of a deceased person against a person to whom any such delivery or payment has been made.

(7) A person shall be deemed to have deserted within the meaning of this section who has been convicted of desertion, or who has been absent without leave for a period of thirty days from the Indian Marine Service, and has not subsequently surrendered or been arrested.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.



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SIMLA, SATURDAY, JULY 2, 1887.

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PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 29th June, 1887:

NO. 8 OF 1887.

A Bill for the Regulation of Military Police in Burma.

WHEREAS it is expedient to establish a military police-force in Lower Burma and to amalgamate that force with the military police-force of Upper Burma; It is hereby enacted as follows:—

Title, extent and commencement. I. (1) This Act may be called the Burma Military Police Act, 1887.

(2) It extends to the whole of Burma (inclusive of Upper Burma), except the Shan States: and

(3) It shall come into force on such day as the Local Government may, by notification in the official Gazette, appoint in this behalf.

2. The Upper Burma Military Police Regulation, 1887, is hereby repealed.

3. In this Act, unless there is something repugnant in the subject or context,—
Definitions.

(1) "military police-officer" means a person appointed to the Burma police-force under Act V of 1861, section 7, who has signed the statement in the schedule to the Upper Burma Military Police Regulation, 1887, or to this Act, in accordance with the provisions of that Regulation or of this Act, as the case may be:

(2) "active service" means service at out-posts or against hostile tribes or other persons in the field:

(3) "Deputy Commissioner" includes an Assistant Commissioner in charge of a subdivision:

(4) "Commandant" means a person appointed by the Local Government to be a Commandant of Military Police, and includes a District Superintendent of Police, and an Assistant District Superintendent of Police in charge of the police of a district or of a subdivision:

(5) "Second-in-command" means a person appointed by the Local Government to be a Second-in-command of Military Police, and includes an Assistant District Superintendent of Police not in charge of the police of a district or of a subdivision: and

(6) the expressions "reason to believe," "criminal force," "assault," "fraudulently" and "voluntarily causing hurt" have the meanings assigned to them respectively in the Indian Penal Code.

Classes and grades of military police-officers.

4. (1) There shall be six classes of military police-officers, namely:—

- (i) inspectors,
- (ii) subahdars,
- (iii) jamadars,
- (iv) havildars,
- (v) naiks, and
- (vi) constables,

and such grades in each class as the Local Government may direct.

(2) The expression "superior officer" in this Act includes—

- (a) in relation to a constable, any constable of a higher grade and any naik, havildar, jamadar, subahdar or inspector;
- (b) in relation to a naik, any naik of a higher grade and any havildar, jamadar, subahdar or inspector;
- (c) in relation to a havildar, any havildar of a higher grade and any jamadar, subahdar or inspector;

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- (d) in relation to a jamadar, any jamadar of a higher grade and any subahdar or inspector;
- (e) in relation to a subahdar, any subahdar of a higher grade and any inspector; and
- (f) in relation to an inspector, any inspector of a higher grade.

More heinous offences. 5. A military police-officer who—

- (a) begins, excites, causes or joins in any mutiny or sedition, or, being present at any mutiny or sedition, does not use his utmost endeavours to suppress it, or, knowing or having reason to believe in the existence of any mutiny, or of any intention to mutiny, does not without delay give information thereof to his commanding or other superior officer; or
- (b) uses, or attempts to use, criminal force to, or commits an assault on, his superior officer, whether on or off duty, in any circumstances in which the superior officer is distinguishable as such in any manner; or
- (c) shamefully abandons or delivers up any garrison, fortress, post or guard which is committed to his charge or which it is his duty to defend; or
- (d) directly or indirectly holds correspondence with, or assists or relieves, any person in arms against the State, or omits to discover immediately to his commanding or other superior officer any such correspondence coming to his knowledge; or

who, while on active service,—

- (e) disobeys the lawful command of his superior officer; or
- (f) deserts the service; or
- (g) being a sentry, sleeps upon his post, or quits it without being regularly relieved or without leave; or
- (h) without authority leaves his commanding officer, or his post or party, to go in search of plunder; or
- (i) quits his guard, picquet, party or patrol without being regularly relieved or without leave; or
- (j) uses criminal force to, or commits an assault on, any person bringing provisions or other necessities to camp or quarters, or forces a safeguard or without authority breaks into any house or any other place for plunder, or plunders, destroys or damages any field, garden or other property of any kind; or
- (k) intentionally causes or spreads a false alarm in action, camp, garrison or quarters,

shall be punished with transportation for life or for a term of not less than seven years, or with imprisonment for a term which may extend to fourteen years, or with fine which may extend to three months' pay, or with fine to that extent in addition to such sentence of transportation or imprisonment, as the case may be, as may be passed upon him under this section.

Less heinous offences. 6. A military police-officer who—

- (a) is in a state of intoxication when on or for any duty or on parade or on the line of march; or
- (b) strikes or attempts to force any sentry; or,
- (c) being in command of a guard, picquet or patrol, refuses to receive any prisoner duly committed to his charge, or without proper authority releases any prisoner, or negligently suffers any prisoner to escape; or,
- (d) being under arrest or in confinement, leaves his arrest or confinement before he is set at liberty by proper authority; or
- (e) is grossly insubordinate or insolent to his superior officer in the execution of his office; or
- (f) refuses to superintend or assist in the making of any field-work or other military work of any description ordered to be made either in quarters or in the field; or
- (g) strikes or otherwise ill-uses any military police-officer subordinate to him in rank or position; or,
- (h) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has committed any riot or trespass, fails to have due reparation made to the injured person, or to report the case to the proper authority; or
- (i) designedly or through neglect injures or loses, or fraudulently disposes of, his arms, clothes, tools, equipments, ammunition, accoutrements or regimental necessities, or any such articles entrusted to him or belonging to any other person; or
- (j) malingers, or feigns or produces disease or infirmity in himself, or intentionally delays his cure, or aggravates his disease or infirmity; or,
- (k) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person; or

who, while not on active service,—

- (l) disobeys the lawful command of his superior officer; or
- (m) plunders, destroys or damages any field, garden or other property of any kind; or,
- (n) being a sentry, sleeps upon his post or quits it without being regularly relieved or without leave; or
- (o) deserts the service;

shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to three months' pay, or with both.

7. A military police-officer, not being above the rank of constable, who, while on service at an outpost at the time of a projected attack on that

post, or in the field against hostile tribes or other persons, commits any offence specified in either of the two last foregoing sections, may, in lieu of any punishment to which he is liable thereunder, be punished with whipping:

Provided that—

- (a) the punishment of whipping shall not in any case exceed thirty stripes; and
- (b) sentence of whipping shall be passed only by a Deputy Commissioner, or, in his absence, by a Commandant invested with the powers of a Magistrate of the first or second class.

8. (1) A Deputy Commissioner, Commandant or Second-in-command, or an officer commanding a separate detachment or an outpost or in temporary command at the head-quarters of a district during the absence of the Deputy Commissioner, Commandant and Second-in-command, may, without a formal trial, award to any military police-officer who is subject to his authority any of the following punishments for the commission of any petty offence against discipline which is not otherwise provided for in this Act or which is not of a sufficiently serious nature to call for a prosecution before a Criminal Court, that is to say,—

- (a) imprisonment to the extent of seven days in the quarter-guard or such other place in or near the lines as may be considered suitable, with forfeiture of all pay and allowances during its continuance;
 - (b) punishment-drill, extra guard, fatigue or other duty, not exceeding thirty days in duration, with or without confinement to lines.
- (2) Any one of these punishments may be awarded separately or in combination with any one or more of the others.

9. A person sentenced under this Act to imprisonment for a period not exceeding three months shall, when he is also dismissed from the Burma police-force, be imprisoned in the nearest or such other jail as the Local Government may, by general or special order, direct, but, when he is not also dismissed from that force, he may, if the convicting officer or Deputy Commissioner so directs, be confined in the quarter-guard or such other place as the convicting officer or Deputy Commissioner may consider suitable.

10. Notwithstanding anything in Act V of 1861 or in any other enactment for the time being in force, the Local Govern-

ment may invest any police-officer not below the rank of Commandant with the powers of a Magistrate of any class for the purpose of enquiring into or trying any offence committed by a military police-officer and punishable under Act V of 1861 or this Act.

11. (1) Before an officer of the Burma police-force is appointed to be a military police-officer, the statement in the schedule shall be read to him in the presence of a Magistrate, Commandant or Second-in-command, and shall be signed by him in acknowledgment of its having been so read to him.

(2) Notwithstanding any notice given under Act V of 1861, section 9, a military police-officer shall not be entitled to be discharged from the Burma police-force except in accordance with the terms of the statement which he has signed under the Upper Burma Military Police Regulation, 1887, or under this Act, as the case may be.

THE SCHEDULE.

STATEMENT.

(See sections 3 and 11.)

AFTER you have served for three years in the Burma Military Police you may, at any time when not on active service, apply for your discharge, through the Inspector, if any, to whom you may be subordinate, to a Commandant of Military Police or to the Deputy Commissioner of the district in which you may be serving, and you will be granted your discharge after two months from the date of your application, unless your discharge would cause the vacancies in the Burma Military Police to exceed one-tenth of the sanctioned strength; in that case you must remain until this objection is waived by competent authority or removed. But when on active service you have no claim to a discharge, and you must remain and do your duty until the necessity for retaining you in the Burma Military Police ceases, when you may make your application in the manner hereinbefore prescribed. In the event of your re-enlistment, after you have been discharged, you will have no claim to reckon for pension or any other purpose your service previous to your discharge.

Signature of police-officer }
in acknowledgment of } A.B.
the above having been }
read to him.

Signed in my presence } C.D.,
after I had ascertained } Magistrate,
that A. B. understood } Commandant or
the purport of what he } Second-in-command.
signed.

STATEMENT OF OBJECTS AND REASONS.

IN January last a Regulation was passed under the Statute 33 Vic., chapter 3, section 1, to provide for the maintenance of discipline among the military police of Upper Burma. It is now proposed to bring a portion of the police of Lower Burma also under military discipline by similar provisions of law and for this purpose to substitute for the



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PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 13th July, 1887:

No. 9 OF 1887.

A Bill to provide for the establishment of bonded warehouses at places other than customs-ports.

WHEREAS it is expedient to provide for the establishment of bonded warehouses at places other than custom-ports; It is hereby enacted as follows:—

I. (1) This Act may be called the Inland Bonded Warehouses Act, 1887.

(2) It shall be read with, and taken as part VIII of 1878. of, the Sea Customs Act, 1878: and

(3) It shall come into force at once.

2. (1) Notwithstanding anything in the Sea Customs Act, 1878, the VIII of 1 Chief Customs-authority may from time to time, with the previous sanction of the Local Government, appoint a public or license a private warehouse at any place which is not a warehousing port, and may with the like sanction cancel such appointment or license.

(2) In reference to such a place and the warehouse appointed or licensed thereat the provisions of the said Act with respect to the levy of customs-duties on goods brought in bond from one customs-port to another, and with respect to warehousing, shall be construed as if the place were a customs-port and a warehousing port, and the warehouse a public or a private warehouse, as the case may be, appointed or licensed thereat under that Act.

STATEMENT OF OBJECTS AND REASONS.

UNDER sections 15 and 16 of the Sea Customs Act, 1878, public or private warehouses, wherein dutiable goods may be deposited without payment of duty, can only be appointed or licensed at warehousing ports; and under section 14 of the same Act places declared under section 11 of the Act to be customs-ports can alone be declared to be warehousing ports. It has recently, however, been brought to the notice of the Government of India, in connection with certain proposals for the establishment of bonded salt golahs at Teknaaf in the Cox's Bazar subdivision of the Chittagong district and at Khulna, the terminus of the Bengal Central Railway, that it is desirable to have power (as was possessed under section 14 of the former Sea Customs Act, VI of 1863) to appoint or license warehouses at places which cannot properly be declared under section 11 of that Act to be customs-ports. The object of this Bill is to confer that power on the Chief Customs-authority acting with the previous sanction of the Local Government.

The 13th July, 1887.

A. COLVIN.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, JULY 30, 1887.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the law relating to the Tenancy of Land in the Punjab was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 27th July, 1887:

We, the undersigned, members of the Select Committee to which the Bill to amend

Memorial from Committee of Landholders, Hoshiarpur [Paper No. 1].
From the Government of the Punjab, No. 44, dated 25th February, 1887, and seventy-nine enclosures [Papers No. 2].
From the Government of the Punjab, No. 442, dated 2nd July, 1887, and enclosures [Papers No. 3].

the law relating to the Tenancy of Land in the Punjab was referred to have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report with the Bill as revised by us annexed thereto.

2. In January last the Government of the Punjab appointed a Committee under the presidency of Colonel Sir William Davies to sit at Lahore and report on the Bill with reference to the very numerous and voluminous opinions which had been submitted to that Government. This Committee, which we will hereafter refer to as the Lahore Committee, submitted a report which has been most useful to us in revising the Bill. Having preliminarily considered the Bill in Calcutta with Sir William Davies, we had the Bill as amended by us there re-printed, and we have now considered and revised this re-print in Simla with the Hon'ble Colonel Wace, who succeeded Sir William Davies in May last as Senior Financial Commissioner of the Punjab and has since been in charge of the Bill.

3. Where sections or Chapters are cited in italics at the commencement of any of the following paragraphs, they are, where the contrary is not stated, the sections and Chapters of the Bill as introduced.

4. As regards the functions of Revenue-officers in matters relating to the tenancy of land, it has been our object in revising the Bill to adhere, as closely as circumstances admit, to the provisions of Chapter V of the Punjab Courts Act, 1884, and we have incorporated in the Bill the greater part of that Chapter, thus making this Bill less dependent than it was on the Land-revenue Bill.

5. *Section 1.*—We propose to exclude the Hazára district from the operation of the Act. The law respecting the tenancy of land in that district is contained in the Hazára Tenancy Regulations, III of 1873 and III of 1874, and, as it differs in some respects from that in force in other parts of the Punjab, we recommend that it be dealt with, as before, by Regulation under the Statute 33 Victoria, Chapter 3.

6. *Section 2, sub-section (1) (section 2 of Bill as revised).*—We have, on the suggestion of the Lahore Committee, proposed to repeal, as regards the Punjab, sections 40 to 43 (both inclusive) of the Northern India Canal and Drainage Act, 1873. Those sections were designed to meet a state of things in which the rent of land did not, as it will under this Bill, vary directly with the land-revenue.

Sections 22 and 27 of the Bill as revised by us will effect the object intended to be attained by those sections of the Canal and Drainage Act.

7. *Section 2, sub-section (2).*—We have removed this sub-section, which would have applied the provisions of the proposed Act to all pending proceedings. We are of opinion that section 6 of the General Clauses Act, 1868, sufficiently provides for such proceedings.

8. *Section 3 of Bill as revised.*—This section follows generally the provisions of section 2 of the Punjab Tenancy Act, 1868 (as amended by section 21 of the Punjab Land-revenue Act, 1871), section 4 of the Oudh Rent Act, 1886, and section 29 of the Bengal Tenancy Act, 1885. In drafting it we have carefully considered the suggestions of the Chief Court and of the Lahore Committee.

9. *Section 3 (section 4 of Bill as revised).*—We have, on the suggestion of the Lahore Committee, so expressed the definition of "land" as to exclude land occupied as sites of buildings in towns or villages.

Among "improvements" we have classed the planting of trees, and we have set forth in detail some of the ordinary operations of husbandry which are not to be deemed to be improvements.

10. *Section 4, sub-section (1), clause (a) (section 5, sub-section (1), clause (a), of Bill as revised).*—The corresponding clause of the Act of 1868 has in many cases been construed as giving a right of occupancy to any tenant who, with his predecessors, whether in the direct or indirect line, has held for three generations. We think this construction should be confirmed, and have so drafted the clause as to secure to tenants who have fulfilled its conditions before the commencement of the proposed Act the same rights as are secured to tenants who had fulfilled the conditions of the clause before the passing of the Act of 1868. We have, however, required the occupancy under the clause to have lasted for not less than twenty years.

We have added a sub-section enlarging, in accordance with the construction applied by the Courts to section 3 of the Act of 1868, the interpretation of terms denoting relationship which are used in this clause.

11. *Section 4, sub-section (1), clause (c) (section 5, sub-section (1), clause (c), of Bill as revised).*—We have so modified the expression of this clause as to make it clear that the right of occupancy acquired under it is confined to land occupied by the tenant in 1865 and continuously since that date. This modification follows the Civil Judgment of the Chief Court, No. 94 of 1880.

12. *Section 4, sub-sections (2) and (3) (section 5, sub-section (2), of Bill as revised).*—We have omitted sub-section (3), and, objection having been taken to the absolute presumption proposed to be created in favour of the tenant by sub-section (2), we have so modified that sub-section as only to permit, instead of requiring, Revenue Courts to presume in favour of the tenant.

13. *Section 9 (section 10 of Bill as revised).*—We have, on the suggestion of the Chief Court, so expressed this section as to confine its operation to claims arising under Chapter II of the Bill.

14. *Sections 10, 11 and 12.*—We have omitted these sections. By the Bill as revised, rents are, save as provided by section 27 and section 32 of that Bill, to be enhanced or reduced by Revenue Courts according to the ordinary procedure applicable to those Courts or the special procedure authorised by section 93, and, save as provided by section 3, sub-section (1), clause (a), rents are to be commuted only by private contract between landlord and tenant. Special provision regarding the conversion of cash-rents in gross is not required, because the ascertainment of the component parts of a rent would be a necessary operation in the enhancement or reduction of the rent of a tenant.

15. *Section 14 of Bill as revised.*—This section follows section 127 of the Oudh Rent Act, 1886.

16. *Section 15 of Bill as revised.*—We are advised that such a saving with respect to local custom and special contract as is contained in section 106 of the North-Western Provinces Rent Act, 1881, is unnecessary for the Punjab.

17. *Section 15 (section 22 of Bill as revised).*—We have revised this section with reference to the following extract from the report of the Lahore Committee, in which the Local Government expressed its concurrence:—

"In the opinions submitted by selected officers there is evidence of a strong and general feeling, not only among the landlords of the Province but also among the officers themselves, that the maximum rates fixed in section 15 (1) as those above which the rent of the various classes of tenants cannot be enhanced are too low. With regard to the highest class of tenants, those belonging to the class specified in section 4 (1) (a), we cannot agree in this opinion. The high status of tenants of this class was well described in the debate on Act XXVIII of 1868 by the Hon'ble Mr. (now Sir John) Strachey, who pointed out that they had been to all intents and purposes proprietors, and saw no reason why they should not have been considered under-proprietors as they would have been in Oudh, with complete rights of property in their holdings. Considering that tenants of this class have held their land for three generations on terms of almost absolute equality with the landowners, and without paying any real rent at all, we cannot agree that the maximum rate proposed for enhancement of rent should be raised in their case, and we recommend that it should be left at two annas per rupee of the land-revenue as in the Bill. In view, however, of the greatly inferior position of tenants of the remaining classes, and of the generally expressed opinion that the limit placed on enhancement of rent is in their case too low, we recommend that the maximum be raised in the case of tenants belonging to any of the classes specified in clauses (b), (c) and (d) of sub-section (1) of section 4 to six annas per rupee, and in the case of tenants of other classes to twelve annas per rupee, of the amount of the land-revenue."

18. *Section 17 (section 23 of Bill as revised).*—We have omitted the greater part of this section. We agree with the Lahore Committee in considering that such interference with decrees as was contemplated by the fourth clause of sub-section (1) should be left to the discretion of the Courts themselves.

19. *Section 25 (section 49 of Bill as revised).*—In drafting this section we have had regard to the provisions of section 156 of the Bengal Tenancy Act, 1855.

20. *Section 24 of Bill as revised.*—Following the law in force in the North-Western Provinces and the Central Provinces, we have provided that an interval of ten years is to elapse between successive suits for enhancement.

21. *Section 25 of Bill as revised.*—We have, on the recommendation of the Lahore Committee, inserted this section for the purpose of shewing clearly that, subject to the provisions of the Act, it is within the discretion of the Court, in dealing with claims for enhancement or reduction of rent, to fix the rent at such amount as it considers fair and equitable.

22. *Section 27 of Bill as revised.*—We have inserted this section in order to make it clear that, where the rent of a tenant is fixed in terms of the land-revenue, a Revenue-officer is to have the same power to alter that rent as if he were dealing with land-revenue payable by a land-owner.

23. *Section 28 of Bill as revised.*—Under the existing law claims to alter rent on the ground of alteration of area are treated as if they were claims for enhancement or reduction of rent. This course does not appear to us to be convenient, and we have therefore dealt with the subject separately, following the precedent of section 52 of the Bengal Tenancy Act, 1855.

24. *Sections 31 and 32 of Bill as revised.*—We consider that the provisions respecting deposit of rent will be placed more appropriately here than in the Land-revenue Bill.

25. *Section 33 of Bill as revised.*—This section, which follows section 22 of the Central Provinces Tenancy Act, 1853, takes the place of section 108 of the Land-revenue Bill.

26. *Section 34 of Bill as revised.*—This section, which was section 138 of the Land-revenue Bill, has been modified in deference to the following remarks of the Lahore Committee:—

"We desire to point out that, owing to the limited meaning which the word 'rent' bears in this Act, it appears necessary to add after the words 'rent of' in section 138 (1) the words 'or other sum payable in respect of.' For example, a landowner might agree to alienate to another person, temporarily or permanently, a sub-proprietary tenure in a part of his holding on an annual payment of a sum calculated at 1½ times the existing assessment. At a subsequent revision of assessment the revenue payable on the land might be so enhanced as to exceed the lump sum to which the landowner would by his agreement be entitled. It will be necessary to give the landowner in a case of this nature the option of re-opening his agreement to the extent necessitated by the enhancement of revenue, but owing to the limited meaning of the words 'rent' and 'tenant' the section as now drafted does not give him this option."

27. *Section 38 of Bill as revised.*—We have, on the recommendation of the Lahore Committee, inserted this section for the purpose of declaring what constitutes such an abandonment of his holding by an occupancy-tenant as will determine his right of occupancy.

28. *Sections 24-30 (39-48 of Bill as revised).*—We have re-cast the provisions of the Bill respecting ejectment, adhering in some respects more closely to the provisions of the existing law of the Punjab and adding to it some provisions of the Oudh Rent Act, 1866.

29. *Sections 31 and 32 (sections 50 and 51 of Bill as revised).*—We have suggested one year as the period within which a suit may be instituted by a tenant for the recovery of land of which he has been wrongfully dispossessed, and, in view of the provision now made for such suits, we think it will be convenient to debar tenants from proceeding under section 9 of the Specific Relief Act, 1877.

In making section 50 of the Bill as revised applicable to tenants ejected under section 29 (section 45 of Bill as revised) we have restored the second paragraph of section 26 of the Act of 1868.

30. *Section 33.*—We have omitted this section on the recommendation of the Lahore Committee.

31. *Section 34 (section 53 of Bill as revised).*—We have made this section apply, as section 34 of the Act of 1868 applies, only to those tenants who have a right of occupancy claimable under section 5.

In section 56 of the Bill as revised we have made provision with respect to the title of other occupancy-tenants to transfer their rights.

32. *Sections 53 and 54 of Bill as revised.*—We have, on the recommendation of the Lahore Committee, secured to the landlord the privilege of pre-emption in case of sale of a right of occupancy under section 5 in execution of a decree or order, and required a mortgagee of any such right to give notice to the landlord of an intention to foreclose.

33. *Section 55, sub-section (2) (section 58 of Bill as revised).*—We have restored the provisions of sections 32 and 33 of the Act of 1868 with respect to sub-letting by occupancy-tenants, providing, however, that the term of a sub-lease is not to exceed seven years.

34. *Section 57 (section 59 of Bill as revised).*—We have restored the provisions of section 36 of the Act of 1868, providing, however, in accordance with the custom of the Province, that, failing male lineal descendants in the male line of descent, the widow, if any, of the deceased tenant shall succeed, for her lifetime or till the occurrence of one or other of certain specified events, to the right of occupancy in preference to his collateral relatives.

35. By sections 61 and 62 of Bill as revised we have provided for the power of the landlord to make an improvement on the tenancy of a tenant having a right of occupancy and to procure the enhancement of the tenant's rent to an appropriate extent in consideration of the improvement. In order that this power may not be exercised to the prejudice of tenants, we have also provided that the permission of the Collector shall be necessary to the making of an improvement by a landlord and that such permission shall be granted in accordance with rules to be made by the Local Government with the previous sanction of the Governor-General in Council.

36. *Section 43 (section 72 of Bill as revised).*—We have assimilated the terms of this section to those of section 27 of the Oudh Rent Act, 1856.

37. *Section 46.*—This section has become sub-section (2) of section 3 of the Bill as revised.

38. *Section 47 (section 69 of Bill as revised).*—We concur with the Lahore Committee in considering that land held with a right of occupancy should, as being already sufficiently protected by the Bill, be excluded from the operation of this section.

We have retained five years' rent as the maximum limit of compensation under the section, but, seeing that there are many circumstances besides the duration of the tenant's occupation which must be considered, we have left it to the Revenue-officer to assess the compensation within that limit according to the merits of each case.

For the proviso in the original Bill we have substituted a proviso to the effect that a tenant who is a joint owner of land to which the section applies shall not be entitled to compensation under the section for ejectment from any part of the land.

39. *Chapter VII of Bill as revised.*—This Chapter re-produces the greater part of Chapter V of the Punjab Courts Act, 1884, and some of the provisions of Chapter II of the Land-revenue Bill as introduced.

40. Among the provisions of the Chapter which seem to call for remark are the following :—

- (a) *Section 86.*—We have removed the restrictions on the appearance of legal practitioners before Revenue-officers as such. As regards Revenue Courts, the position of legal practitioners remains as it is under the existing law.
- (b) *Section 93.*—This section follows section 75 of the North-Western Provinces Land-revenue Act, 1873.
- (c) *Section 94.*—This section provides that nothing in section 424 or section 433 of the Code of Civil Procedure, or in section 36 of the Punjab Municipal Act, 1884, is to be construed as applying to a suit cognizable by a Revenue Court.
- (d) *Section 95.*—This section re-produces sections 149 and 152 of the Bengal Tenancy Act, 1885.
- (e) *Section 97.*—This section is new and prohibits the imprisonment of a tenant in execution of a decree for an arrear of rent during the continuance of his occupancy.
- (f) *Section 99.*—This section follows section 205 of the North-Western Provinces Rent Act, 1881.
- (g) *Section 100.*—This section, which was section 11 of the Land-revenue Bill as introduced, has been amended in accordance with suggestions made by the Chief Court.
- (h) *Section 106.*—By this section we have proposed to empower the Financial Commissioner to make rules for determining the number and amount of the instalments, and the times, by and at which rent is to be paid, and to prescribe the periods during which, in proceedings held under the proposed Act, a Revenue-officer or Revenue Court is not, except for reasons of urgency to be recorded, to issue any process of arrest against a tenant or against a landowner who cultivates his own land.

41. The publication ordered by the Council has been made as follows :

In English.

| <i>Gazette.</i> | <i>Date.</i> |
|----------------------------------|---|
| Gazette of India | 26th June, and 3rd and 10th July, 1886. |
| Punjab Government Gazette | 1st, 8th and 15th July, 1886. |

In the Vernacular.

| <i>Province.</i> | <i>Language.</i> | <i>Date.</i> |
|------------------|------------------|---|
| Punjab | Urdu | 22nd and 29th July, and 5th August, 1886. |

42. We think that the measure has been so altered as to require re-publication, and we recommend that it be re-published, with this Report, for general information, in the Gazette of India in English and in the Punjab Government Gazette in English and Urdu.

E. G. WACE.
A. COLVIN.
ANDREW R. SCOBLE.
J. B. PEILE.
J. W. QUINTON.

The 27th July, 1887.

No. II. THE PUNJAB TENANCY BILL.

CONTENTS.

CHAPTER I.

PRELIMINARY.

Sections.

1. Title, extent and commencement.
2. Repeat.
3. Operation of records-of-rights and future contracts.
4. Definitions.

CHAPTER II.

RIGHT OF OCCUPANCY.

5. Tenants having right of occupancy.
6. Right of occupancy of other tenants recorded as having the right before passing of Punjab Tenancy Act, 1868.
7. Right of occupancy in land taken in exchange.
8. Establishment of right of occupancy on grounds other than those expressly stated in Act.
9. Right of occupancy not to be acquired by mere lapse of time.
10. Right of occupancy not to be acquired by joint owner in land held in joint ownership.
11. Continuance of existing occupancy-rights.

CHAPTER III.

RENT.

Rents generally.

12. Respective rights of landlord and tenant to produce.
13. Commutation and alteration of rent.
14. Rent payable for land occupied without consent of landlord.
15. Collection of rents of undivided property.

Produce-rents.

16. Presumption with respect to produce removed before division or appraisal.
17. Appointment of referee for division or appraisal.
18. Appointment of assessors and procedure of referee.
19. Procedure after division or appraisal.
20. Enhancement of produce-rents of occupancy-tenants.
21. Reduction of rents referred to in the last foregoing section.

Cash-rents paid by Tenants having Right of Occupancy.

22. Enhancement of cash-rents of occupancy-tenants.
23. Reduction of rents referred to in the last foregoing section.

General Provisions relating to Suits for Enhancement or Reduction of Rent.

24. Enhancement and reduction of rent by suit.
25. Discretion as to extent of enhancement or reduction.

Sections.

26. Time for enhancement or reduction to take effect.

Adjustment of Rents expressed in terms of the Land-revenue.

27. Adjustment of rents expressed in terms of the land-revenue.

Alteration of Rent on Alteration of Area.

28. Alteration of rent on alteration of area.

Remission.

29. Remission of rent by Courts decreeing arrears.
30. Remission and suspension of rent consequent on like treatment of land-revenue.

Deposits.

31. Power to deposit rent in certain cases with Revenue-officer.
32. Effect of depositing rent.

Recovery of Rent from attached Produce.

33. Recovery of rent from attached produce.

Leases for period exceeding term of assessment of land-revenue.

34. Treatment of leases for period exceeding or equal to term of assessment of land-revenue.

CHAPTER IV.

RELINQUISHMENT, ABANDONMENT AND EJECTMENT.

Relinquishment.

35. Relinquishment by tenant for a fixed term.
36. Relinquishment by any other tenant.
37. Relinquishment of part only of a tenancy.

Abandonment.

38. Abandonment of tenancy by occupancy-tenant.

Ejectment.

LIABILITY TO EJECTMENT.

39. Grounds of ejectment of occupancy-tenant.
40. Grounds of ejectment of tenant for a fixed term.
41. Ejectment of tenant from year to year.

PROCEDURE ON EJECTMENT.

42. Restriction on ejectment.
43. Application to Revenue-officer for ejectment.
44. Ejectment for failure to satisfy decree for arrears of rent.
45. Ejectment of tenant from year to year by notice.
46. Power to make rules.

GENERAL PROVISIONS RESPECTING EJECTMENT.

47. Time for ejectment.
48. Relief against forfeiture.
49. Rights of ejected tenants in respect of crops and land prepared for sowing.

RELIEF FOR WRONGFUL DISPOSSESSION.

50. Relief for wrongful dispossession or ejectment.
51. Bar of relief by suit under section 9, Act I, 1877.

Power to vary Dates prescribed by this Chapter.

52. Power for Local Government to fix dates for certain purposes.

CHAPTER V.

ALIENATION OF, AND SUCCESSION TO, RIGHT OF OCCUPANCY.

Alienation.

Sections.

53. Private transfer of right of occupancy under section 5 by tenant.
54. Procedure on foreclosure of mortgage of right of occupancy under section 5.
55. Sale of right of occupancy under section 5 in execution of decree.
56. Transfer of right of occupancy under any other section than section 5.
57. Rights and liabilities of transferee of right of occupancy.
58. Subletting.

Succession.

59. Succession to right of occupancy.

Nullity of Irregular Transfers.

60. Nullity of irregular transfer of right of occupancy.

CHAPTER VI.

IMPROVEMENTS AND COMPENSATION.

Improvements by Landlords.

61. Improvements by landlords on tenancies of occupancy-tenants.
62. Enhancement of rent in consideration of an improvement made by a landlord on the tenancy of an occupancy-tenant.

Improvements by Tenants.

63. Title of occupancy-tenant to make improvements.
64. Title of tenants not having right of occupancy to make improvements.
65. Improvements made before commencement of this Act.
66. Improvements made in anticipation of ejectment.
67. Tender of lease for twenty years to tenant to be a bar to right to compensation.
68. Liability to pay compensation for improvements to tenant on ejectment or on enhancement of his rent.

Compensation for Disturbance of Clearing Tenants.

69. Compensation for disturbance of clearing tenants.

Procedure in determining Compensation.

70. Determination of compensation by Revenue Courts.
71. Determination of compensation by Revenue-officers.
72. Matters to be regarded in assessment of compensation for improvements.
73. Form of compensation.

Relief in case of Ejectment before Determination of Compensation.

74. Relief in case of ejectment before determination of compensation.

CHAPTER VII.

JURISDICTION AND PROCEDURE.

Jurisdiction.

Sections.

75. Revenue-officers.
76. Applications and proceedings cognizable by Revenue-officers.
77. Revenue Courts and suits cognizable by them.

Administrative Control.

78. Superintendence and control of Revenue-officers and Revenue Courts.
79. Power to distribute business and withdraw and transfer cases.

Appeal, Review and Revision.

80. Appeals.
81. Limitation for appeals.
82. Review by Revenue-officers.
83. Computation of periods limited for appeals and applications for review.
84. Power to call for, examine and revise proceedings of Revenue-officers and Revenue Courts.

Procedure.

85. Procedure of Revenue-officers.
86. Persons by whom appearances may be made before Revenue-officers as such and not as Revenue Courts.
87. Costs.
88. Procedure of Revenue Courts.
89. Power of Revenue-officer or Revenue Court to summon persons.
90. Mode of service of summons.
91. Mode of service of notice or order.
92. Mode of making proclamation.
93. Joinder of tenants as parties to proceedings relating to rent.
94. Exception of suits under this Act from operation of certain enactments.
95. Payment into Court of money admitted to be due to third person.
96. Execution of decrees for arrears of rent.
97. Prohibition of imprisonment of tenants in execution of decrees for arrears of rent.
98. Power to refer party to Civil Court.
99. Power to refer to Chief Court questions as to jurisdiction.
100. Power of Chief Court to validate proceedings had under mistake as to jurisdiction.

Miscellaneous.

101. Place of sitting.
102. Holidays.
103. Discharge of duties of Collector dying or being disabled.
104. Retention of powers by Revenue-officers on transfer.
105. Conferment of powers of Revenue-officer or Revenue Court.
106. Power for Financial Commissioner to make rules.
107. Rules to be made after previous publication.
108. Powers exercisable by Financial Commissioner from time to time.

THE SCHEDULE.—ENACTMENTS REPEALED.

*The Punjab Tenancy Bill.**(Chapter I.—Preliminary.—Sections 1-4.)**A Bill to amend the Law relating to the Tenancy of land in the Punjab.*

WHEREAS it is expedient to amend the law relating to the tenancy of land in the Punjab; It is hereby enacted as follows :

CHAPTER I.

PRELIMINARY.

Title, extent and commencement. 1. (1) This Act may be called the Punjab Tenancy Act, 1887.

(2) It extends to the whole of the territories (including the pargana of Spiti) for the time being administered by the Lieutenant-Governor of the Punjab, except the Hazara district ; and

(3) It shall come into force on such date as the Local Government, with the previous sanction of the Governor-General in Council, may by notification appoint in this behalf.

(4) Any power conferred by this Act on the Financial Commissioner to make rules, and on the Local Government to sanction them, may be exercised at any time after the passing of this Act, but a rule so made shall not take effect till the commencement of this Act.

2. The enactments mentioned in the schedule are repealed to the extent specified in the third column thereof.

3. (1) Nothing in this Act shall be construed to affect the operation of any of the following matters before the eighteenth day of November, 1871, and attested by the proper officer, in the record of a regular settlement sanctioned by the Local Government, namely :

- (a) the enhancement or abatement of the rent of a tenant having a right of occupancy, or the commutation of rent in kind into rent in money or of rent in money into rent in kind, or the taking of rent in kind by division or apportionment of the produce or other procedure of a like nature, or
- (b) the letting or under-letting of land in which there is a right of occupancy by the tenant having that right, or the alienation of or succession to land in which such a right subsists,

and every such entry with respect to any such matter shall be deemed to be an agreement between the landlord and the tenant.

(2) An entry in any record-of-rights providing—

- (a) that a landlord may prevent a tenant from making, or eject him for making, such improvements on his tenancy as he is entitled to make under this Act, or
- (b) that a tenant ejected from his tenancy shall not be entitled to compensation for improvements or for disturbance in any case in which he would under this Act be entitled to compensation therefor, or
- (c) that a landlord may eject a tenant otherwise than in accordance with the provisions of this Act,

shall be void.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

- (a) override any of the provisions of this Act with respect to the acquisition of a right of occupancy, or the reduction, remission or suspension of rent, or the enhancement of the rent of a tenant having a right of occupancy under section 5, section 6 or section 7, or
- (b) take away or limit the right of a tenant, as determined by this Act, to make improvements and claim compensation therefor, or, where compensation for disturbance can be claimed under this Act, to claim such compensation, or
- (c) entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act.

(4) Nothing in clause (a) of the last foregoing sub-section shall apply to a contract by which a tenant binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be made in respect of his tenancy by, or at the expense of, his landlord, and to the benefit of which the tenant is not otherwise entitled.

4. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(1) "land" means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings on such land :

(2) "pay", with its grammatical variations and cognate expressions, includes, when used with reference to rent, "deliver" and "render", with their grammatical variations and cognate expressions :

(3) "tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that other person ; but it does not include—

- (a) an inferior landowner, or
- (b) a mortgagee of the rights of a landowner, or
- (c) a person to whom a holding has been transferred, or an estate or holding has been let in farm, under the Punjab Land-revenue Act, 1887, for the recovery of an arrear of land-revenue or of a sum recoverable as such an arrear, or
- (d) a person who takes from the Government a lease of unoccupied land for the purpose of subletting it :

(4) "landlord" means a person under whom a tenant holds land, and to whom the tenant is, or but for a special contract would be, liable to pay rent for that land :

(5) "tenant" and "landlord" include the predecessors and successors in interest of a tenant, and landlord respectively :

(6) "rent" means whatever is payable to a landlord in money, kind or service by a tenant on account of the use or occupation of land held by him :

(7) "arrear of rent" means rent which remains unpaid after the date on which it becomes payable :

*The Punjab Tenancy Bill.**(Chapter II.—Right of Occupancy.—Section 5.)*

(8) "tenancy" means a parcel of land held by a tenant of a landlord under one lease or one set of conditions:

(9) "estate" means any area—

(a) for which a separate record-of-rights has been made; or

(b) which has been separately assessed to land-revenue, or would have been so assessed if the land-revenue had not been released, compounded for or redeemed; or

(c) which the Local Government may, by general rule or special order, declare to be an estate:

(10) "landowner" does not include a tenant or an assignee of land-revenue, but does include a person to whom a holding has been transferred, or an estate or holding has been let in farm, under the Punjab Land-revenue Act, 1887, for the recovery of an arrear of land-revenue or of a sum recoverable as such an arrear, and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof, or in the enjoyment of any part of the profits of an estate:

(11) "holding" means a share or portion of an estate held by one landowner or jointly by two or more landowners:

(12) "village-officer" means a chief-headman, headman or *putwari*:

(13) "land-revenue" means land-revenue assessed under any law for the time being in force or assessable under the Punjab Land-revenue Act, 1887, and includes any rate imposed in respect of the increased value of land due to irrigation:

(14) "rates and cesses" means rates and cesses which are primarily payable by landowners, and includes—

(a) the local rate, if any, payable under the Punjab Local Rates Act, 1878;

(b) the local rate, if any, payable under the Punjab District Boards Act, 1883, and any fee leviable under section 33 of that Act from landowners for the use of or benefits derived from such works as are referred to in section 20, clauses (i) and (j), of that Act;

(c) any annual rate chargeable on owners of lands under section 59 of the Northern India Canal and Drainage Act, 1873;

(d) the *zaildari* and village-officers' cesses; and

(e) sums payable on account of village-expenses:

(15) "village-cess" includes any cess, contribution or due which is customarily leviable within an estate and is neither a payment for the use of private property or for personal service nor imposed by or under any enactment for the time being in force:

(16) "Revenue-officer" or "Revenue Court," in any provision of this Act, means a Revenue-officer or Revenue Court having authority under this Act to discharge the functions of a Revenue-officer or Revenue Court, as the case may be, under that provision:

(17) "agricultural year" means the year commencing on the sixteenth day of June, or on such other date as the Local Government may by notification appoint for any local area:

(18) "improvement" means, with reference to a tenancy, any work which is suitable to the

tenancy and consistent with the conditions on which it is held, by which the value of the tenancy has been and continues to be increased, and which, if not executed on the tenancy, is either executed directly for its benefit, or is, after execution, made directly beneficial to it;

Explanation I.—It includes, among other things,—

(a) the construction of wells and other works for the storage or supply of water for agricultural purposes;

(b) the construction of works for drainage and for protection against floods;

(c) the planting of trees, the reclaiming, enclosing, levelling and terracing of land for agricultural purposes and other works of a like nature;

(d) the erection of buildings required for the more convenient or profitable cultivation of a tenancy; and

(e) the renewal or re-construction of any of the foregoing works, or such alterations therein, or additions thereto, as are not of the nature of mere repairs and as durably increase their value;

But it does not include such clearances, embankments, levellings, enclosures, temporary wells and water-channels as are made by tenants in the ordinary course of cultivation and without any special expenditure, or any other benefit accruing to land from the ordinary operations of husbandry;

Explanation II.—A work which benefits several tenancies may be deemed to be, with respect to each of them, an improvement;

Explanation III.—A work executed by a tenant is not an improvement if it substantially diminishes the value of any other part of his landlord's property:

(19) "*jagirdar*" includes any person, other than a village-servant, to whom the land-revenue of any land has been assigned in whole or in part by the Government or by an officer of the Government:

(20) "legal practitioner" means any legal practitioner within the meaning of the Legal Practitioners Act, 1879, except a *mukhtar*: and

(21) "notification" means a notification published by authority of the Local Government in the official Gazette.

CHAPTER II.

RIGHT OF OCCUPANCY.

Tenants having right of occupancy. 5. (1) A tenant—

(a) who has before the commencement of this Act occupied land for more than two generations in the male line of descent through a grandfather or grand-uncle and for a period of not less than twenty years and paid no rent in respect of the land beyond the amount of the land-revenue thereof and the rates and cesses for the time being chargeable thereon, or

(b) who having owned land, and having ceased to be landowner thereof otherwise than by forfeiture to the Government or than by any voluntary act, has, since he ceased to be landowner, continuously occupied the land, or

1878.

of 1883.

of 1873.

XVIII
1879.

*The Punjab Tenancy Bill.**(Chapter II.—Right of Occupancy.—Sections 6-11. Chapter III.—Rent.—Sections 12-15.)*

(c) who, in a village or estate in which he settled along with, or was settled by, the founders thereof, occupied land on the twenty-first day of October, 1868, and has continuously occupied the land since that date, or

(d) who is or has been jágirdár of the estate or any part of the estate in which the land occupied by him is situate, and who,—

(i) being such jágirdár, has continuously occupied the land for not less than twenty years, or

(ii) having been such jágirdár, occupied the land while he was jágirdár and has continuously occupied it for not less than twenty years,

shall be deemed to have a right of occupancy in the land so occupied.

(2) If a tenant proves that he has continuously occupied land for thirty years and paid no rent therefor beyond the amount of the land-revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he has fulfilled the conditions of clause (a) of sub-section (1).

(3) The words in that clause denoting natural relations include relations by adoption or by customary appointment of an heir or by the usage of a religious community.

6. A tenant recorded in a record-of-rights sanctioned by the Local Government before the twenty-first day of October, 1868, as a tenant having a right of occupancy in land which he has continuously occupied from the time of the preparation of that record, shall be deemed to have a right of occupancy in that land unless the contrary has been established by a decree of a competent Court before the passing of this Act.

7. If the tenant has voluntarily exchanged the land, or any portion of the land, formerly occupied by him, for other land belonging to the same landlord, the land taken in exchange shall, for the purposes of this Act, be held to be subject to the same right of occupancy as that to which the land given in exchange would have been subject if the exchange had not taken place.

8. Nothing in the foregoing sections of this Chapter shall preclude any person from establishing a right of occupancy on any ground other than the grounds specified in those sections.

9. No tenant shall acquire a right of occupancy by mere lapse of time.

10. In the absence of a custom to the contrary no one of several joint owners of land shall acquire a right of occupancy under this Chapter in land jointly owned by them.

11. Every tenant who immediately before the commencement of this Act has a right of occupancy in any land shall, when this Act comes into force, have a right of occupancy in that land.

CHAPTER III.

RENT.

Rents generally.

12. (1) The rent for the time being payable in respect of a tenancy shall be the first charge on the produce thereof.

(2) A tenant shall be entitled to tend, cut and harvest the produce of his tenancy in due course of husbandry without any interference on the part of his landlord.

(3) Except where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(4) Where rent is taken by division of the produce—

(a) the tenant shall be entitled to the exclusive possession of the whole produce until it is divided;

(b) the landlord shall be entitled to be present at, and take part in, the division of the produce; and

(c) when the produce has been divided, the landlord shall be entitled to the possession of his share thereof.

13. (1) Where rent is taken by any of the following methods, namely:—

(a) by division or appraisement of the produce,

(b) by cash-rates fixed with reference to the nature of the crops grown,

(c) by a cash-rate on a recognised measure of area,

(d) by a cash-rent in gross on the tenancy, or

(e) partly by one of the methods specified in clauses (a), (b) and (c) of this sub-section and partly by another or others of them,

one of those methods shall not be commuted in whole or in part into another without the consent of both landlord and tenant.

(2) In the absence of a decree or order or a valid contract to the contrary, a tenant whose rent is taken by any of the methods specified in clauses (a), (b) and (c) of sub-section (1), or by the method specified in clause (d) of that sub-section, shall not be liable to pay for a tenancy rent at any higher rate, or of a higher amount, as the case may be, than the rate or amount payable in respect of the tenancy for the preceding agricultural year.

14. Any person in possession of land occupied without the consent of the landlord shall be liable for the rent of that land at the rate payable in the preceding agricultural year, or, if rent was not payable in that year, at such rate as the Court may determine to be fair and equitable.

15. When two or more persons are landlords of a tenancy in respect of the same tenancy—

(a) the tenant shall not be bound to pay part of the rent of his tenancy to one of those persons and part to another; and

The Punjab Tenancy Bill.
(Chapter III.—Rent.—Sections 16-24.)

- (b) no one of those persons shall be entitled to sue the tenant separately under this Act unless he is authorised to receive from the tenant the whole of the rent payable by him in respect of the tenancy.

Produce-rents.

16. Where rent is taken by division or appraisement of the produce, if the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due division or appraisement thereof, or deals therewith in a manner contrary to established usage, the produce shall be deemed to have been as full as the fullest crop of the same description on similar land in the neighbourhood for that harvest.

17. If either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the division or appraisement of the produce, or if there is a dispute about the division or appraisement, a Revenue-officer may, on the application of either party, appoint such person as he thinks fit to be a referee to divide or appraise the produce.

18. (1) When a Revenue-officer appoints a referee under the last foregoing section, he may, in his discretion, give him instructions with respect to the association with himself of any other persons as assessors, the number, qualifications and selection of those assessors, and the procedure to be followed in making the division or appraisement.

(2) The referee so appointed shall make the division or appraisement in accordance with any instructions which he may have received from the Revenue-officer under the last foregoing sub-section.

(3) Before making the division or appraisement the referee shall give notice to the landlord and tenant of the time and place at which the division or appraisement will be made, but, if either the landlord or the tenant fails to attend either personally or by agent, the referee may proceed *ex parte*.

(4) For the purpose of making the division or appraisement, the referee, with his assessors, if any, may enter upon any land on which or into any building in which the produce is.

19. (1) The result of the division or appraisement shall be recorded and signed by the referee, and the record shall be submitted to the Revenue-officer.

(2) The Revenue-officer shall consider the record, and, after such further inquiry, if any, as he may deem necessary, shall make an order either confirming or varying the division or appraisement.

(3) The rent shall be payable in accordance with that order.

(4) The Revenue-officer shall also make such order as to the costs of the reference as he thinks fit.

(5) The costs may include the remuneration of the referee and of the assessors, if any, and may be levied from the applicant before the appointment of the referee subject to adjustment at the close of the proceedings.

20. Where the rent of a tenant having a right of occupancy in any land is a share of the produce, or of the appraised value thereof, with or without an addition in money, or is paid according to cash-rates fixed with reference to the nature of the crops grown, the tenant shall be entitled to occupy the land at the share or rates hitherto paid by him:

Provided that, when the land or any part thereof previously not irrigated or flooded becomes irrigated or flooded, the share or rates payable in respect of the land or part may, subject to the provisions of this Act, be enhanced to the share or rates paid by tenants, having a similar right of occupancy, for irrigated or flooded land of a similar description and with similar advantages.

21. When the land, or any part of the land, held by a tenant having a right of occupancy to whom the last foregoing section applies ceases to be irrigated or flooded, the share or rates payable in respect of the land or part may be reduced to the share or rates paid by tenants, having a similar right of occupancy, for unirrigated or unflooded land of a similar description and with similar advantages.

Cash-rents paid by Tenants having Right of Occupancy.

22. (1) Where a tenant having a right of occupancy pays his rent entirely by a cash-rate on a recognised measure of area or by a cash-rent in gross on his tenancy, the rent may be enhanced on the ground that, after deduction therefrom of the land-revenue of, and the rates and cesses chargeable on, the tenancy, it is—

(a) if the tenant belongs to the class specified in clause (a) of sub-section (1) of section 5, less than two annas per rupee of the amount of the land-revenue;

(b) if he belongs to any of the classes specified in clauses (b), (c) and (d) of that sub-section, less than six annas per rupee of the amount of the land-revenue;

(c) if he belongs to the class specified in section 6, or if his right of occupancy is established under section 8 and his rent is not regulated by contract, less than twelve annas per rupee of the amount of the land-revenue.

(2) In a case to which sub-section (1) applies, the rent may be enhanced to an amount not exceeding two, six or twelve annas per rupee of the amount of the land-revenue, as the case may be, in addition to the amount of the land-revenue of the tenancy and the rates and cesses chargeable thereon.

23. The rent payable by a tenant to whom the last foregoing section applies may be reduced on the ground that the productive powers of his tenancy have been decreased by a cause beyond his control.

General Provisions relating to Suits for Enhancement or Reduction of Rent.

24. (1) A Revenue Court, on the suit of either landlord or tenant, may, subject to the provisions of this and other sections of this

The Punjab Tenancy Bill.
(Chapter III.—Rent.—Sections 25-30.)

Act, enhance or reduce the rent of any tenant having a right of occupancy.

(2) Where a decree for the enhancement of the rent of such a tenant has been passed under the Punjab Tenancy Act, 1868, a suit for a further enhancement of his rent shall not lie till the expiration of five years from the date of the decree, unless in the meantime the local area in which the land comprised in the decree is situate has been generally re-assessed and the revenue payable in respect of that land has been increased.

(3) Subject to the provisions of sub-section (2), a suit instituted for the enhancement of the rent of a tenant having a right of occupancy shall not be entertained if within the ten years next preceding its institution his rent has been commuted under section 13 or enhanced under this section, or a decree has been passed under this Act dismissing on the merits a suit for the enhancement of his rent.

25. In enhancing or reducing the rent of any land under the foregoing provisions of this Chapter, the Court shall, within the limits prescribed by those provisions, enhance or reduce the rent to such an amount as it considers fair and equitable, but shall not in any case fix a rent less than the amount of the land-revenue of the land and the rates and cesses chargeable thereon.

26. (1) Unless the Court decreeing an enhancement of rent otherwise directs, the enhancement shall take effect from the commencement of the agricultural year next following the date of the decree.

(2) A Court decreeing a reduction of rent shall specify in the decree the date on and from which the reduction is to take effect.

Adjustment of Rents expressed in terms of the Land-revenue.

27. (1) Where the rent of a tenancy is the whole or a share of the land-revenue thereof, with or without an addition in money, kind or service, and the land-revenue of the tenancy is altered, a Revenue-officer having authority under section 56 of the Punjab Land-revenue Act, 1887, to determine the land-revenue payable in respect of the several holdings comprised in the estate in which the tenancy is situate shall determine also the amount of the land-revenue of the tenancy, or the proportionate share thereof, payable by the tenant as rent.

(2) In any case in which an addition referred to in sub-section (1) is the whole or a share of the rates and cesses chargeable on the tenancy, or a percentage fixed with reference to the land-revenue, or both, the Revenue-officer shall, after determining the land-revenue of the tenancy or the share thereof under that sub-section, alter the amount of the addition in proportion to the alteration of the land-revenue.

(3) The sum or sums determined under the foregoing sub-sections, together with any addition previously payable other than that referred to in sub-section (2), shall be the rent payable in respect of the tenancy until there is again an alteration of the land-revenue thereof or until the rent is enhanced by a suit under 1

(4) An alteration of rent under this section shall not be deemed an enhancement or reduction of rent within the meaning of this Act.

Alteration of Rent on Alteration of Area.

Alteration of rent on alteration of area. **28. (1)** Every tenant shall—

(a) be liable to pay additional rent for all land proved to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to his tenancy of land which, having previously belonged to the tenancy, was lost by diluvion or otherwise without any reduction of the rent being made; and

(b) be entitled to an abatement of rent in respect of any deficiency proved to exist in the area of his tenancy as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenancy by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(2) In determining the area for which rent has been previously paid, the Court shall have regard to the following among other matters, namely:

(a) the origin and conditions of the tenant's occupancy, for instance, whether the rent was a rent in gross for the entire tenancy;

(b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord; and

(c) the length of time during which there has been no dispute as to rent or area.

(3) In adding to or abating rent under this section, the Court shall add to or abate the rent to such an amount as it deems to be fair and equitable, and shall specify in its decree the date on and from which the addition or abatement is to take effect.

(4) An addition to or abatement of rent under this section shall not be deemed an enhancement or reduction of rent within the meaning of this Act.

Remission.

29. Notwithstanding anything in the foregoing sections of this Chapter, if it appears to a Court making a decree for an arrear of rent that the area of a tenancy has been so diminished by diluvion or otherwise, or that the produce thereof has been so diminished by drought, hail, deposit of sand or other like calamity, that the full amount of rent payable by the tenant cannot be equitably decreed, the Court may, with the previous sanction of the Collector, allow such remission from the rent payable by the tenant as may appear to it to be just.

30. (1) Whenever from any cause the payment of the whole or any part of the land-revenue payable in respect of any land is remitted or suspended, a

The Punjab Tenancy Bill.
(Chapter III.—Rent.—Sections 31-34.)

as the case may be, the payment of the rent of that land to an amount which may bear the same proportion to the whole of the rent payable in respect of the land as the land-revenue of which the payment has been remitted or suspended bears to the whole of the land-revenue payable in respect of the land.

(2) An order passed under sub-section (1) shall not be liable to be contested by suit in any Court.

(3) A suit shall not lie for the recovery of any rent of which the payment has been remitted, or, during the period of suspension, of any rent of which the payment has been suspended.

(4) Where the payment of rent has been suspended, the period during which the suspension has continued shall be excluded in the computation of the period of limitation prescribed for a suit for the recovery of the rent.

(5) If the landlord collects any rent of which the payment has been remitted, or before the expiration of the period of suspension collects any rent of which the payment has been suspended, the whole of the land-revenue remitted or suspended in his favour shall become immediately payable by him.

(6) The provisions of this section relating to the remission and suspension of the payment of rent may be applied, so far as they can be made applicable, to land of which the land-revenue has been released, compounded for or redeemed, in any case in which, if the land-revenue in respect of the land had not been released, compounded for or redeemed, the whole or any part of it might, in the opinion of the Revenue-officer, be remitted or suspended under the rules for the time being in force for regulating the remission and suspension of land-revenue.

Deposits.

Power to deposit rent in certain cases with Revenue-officer.

31. In either of the following cases, namely :

(a) when a landlord refuses to receive, or grant a receipt for, any rent payable in money when tendered to him by a tenant,

(b) when a tenant is in doubt as to the person entitled to receive rent payable in money,

the tenant may apply to a Revenue-officer for leave to deposit the rent in his office, and the Revenue-officer shall receive the deposit if, after examining the applicant, he is satisfied that there is sufficient ground for the application and if the applicant pays the fee, if any, chargeable for the issue of the notice next hereinafter referred to.

32. (1) When a deposit has been so received, it shall be deemed to be a payment made by the tenant to his landlord in respect of rent due.

(2) The Revenue-officer receiving the deposit shall give notice of the receipt thereof to every person who he has reason to believe claims or is entitled to the deposit, and may pay the amount thereof to any person appearing to him to be entitled thereto, or may, if he thinks fit, retain the deposit pending the decision of a Civil Court as to the person so entitled.

(3) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government,

under this section, but nothing in this sub-section shall prevent any person entitled to receive the amount of any such deposit from recovering it from a person to whom it has been paid by a Revenue-officer.

Recovery of Rent from attached Produce.

33. (1) If an order is made by any Court for the attachment of the produce of a tenancy or of any part of a tenancy, the landlord may apply to the Revenue-officer by whom the attachment is to be or has been made to sell the produce and pay to him out of the proceeds of the sale thereof the amount or value of—

(a) any rent which has fallen due to him in respect of the tenancy within the year immediately preceding the application, and

(b) the rent which will be falling due after the harvesting of the produce and is chargeable against it.

(2) The Revenue-officer shall give the person at whose instance the attachment was made an opportunity of showing cause why the application of the landlord should not be granted, and, if he finds the landlord's claim to the whole or any part of the rent to be proved, he shall cause the produce or such portion thereof as he may deem necessary to be sold, and shall apply the proceeds of the sale in the first instance to satisfy the claim.

(3) The finding of the Revenue-officer under sub-section (2) shall have the force of a decree in a suit between the landlord and the tenant.

Leases for period exceeding term of assessment of land-revenue.

34. (1) Where a lease has been granted, or an agreement has been entered into, by a landowner in respect of any land assessed to land-revenue, fixing for a period exceeding the term for which the land-revenue has been assessed the rent or other sum payable in respect of the land under the lease or agreement, and that term has expired, the lease or agreement shall be voidable—

(a) at the option of the landowner if the land-revenue of the land has been enhanced and the person to whom the lease has been granted or with whom the agreement has been entered into refuses to pay such rent or other sum as a Revenue Court, on the suit of the landowner, determines to be fair and equitable; and

where the relation of landlord and tenant exists between the grantor and grantee of the lease, or between the persons who entered into the agreement—

(b) at the option of the tenant if the land-revenue of the land has been reduced and the landlord refuses to accept such rent as a Revenue Court, on the suit of the tenant, determines to be fair and equitable.

(2) Any contract or agreement relative to the occupation, rent, profits or produce of any land which has been entered into for the term of the currency of an assessment shall, unless a contrary intention clearly appears in the contract or agreement or the contract or agreement is terminated by consent of parties or course of law, continue in force until the assessment takes effect.

*The Punjab Tenancy Bill.**(Chapter IV.—Relinquishment, Abandonment and Ejectment.—Sections 35-45.)*

CHAPTER IV.

RELINQUISHMENT, ABANDONMENT AND EJECTMENT.

Relinquishment.

35. A tenant holding for a fixed term under Relinquishment by a decree or contract may tenant for a fixed term. relinquish his tenancy without notice at the end of that term.

36. (1) Any other tenant may relinquish his Relinquishment by tenancy by giving verbally any other tenant. or in writing to his landlord, or to his landlord's agent, on or before the fifteenth day of January in any year, notice of his intention to relinquish the tenancy at the end of the agricultural year then current.

(2) The tenant may, instead of, or in addition to, giving the notice in the manner mentioned in sub-section (1), apply to a Revenue-officer on or before the date aforesaid to cause the notice to be served on the landlord, and the Revenue-officer, on receiving the cost of service from the tenant, shall cause the notice to be served as soon as may be.

(3) If the tenant does not give notice in the manner prescribed in this section, he shall be liable to pay the rent of his tenancy for any part of the ensuing agricultural year during which the tenancy is not let by the landlord to some other person or is not cultivated by the landlord himself.

Relinquishment of 37. A tenant cannot, without part only of a tenancy. out the consent of his landlord, relinquish a part only of his tenancy.

Abandonment.

38. If a tenant having a right of occupancy Abandonment of ten- in land leaves the land for any by occupancy-tenant. insufficient cause for more than one year without making arrangements for its cultivation or for the payment of the rent thereof, he shall be deemed to have forfeited his right of occupancy in the land.

Ejectment.

LIABILITY TO EJECTMENT.

39. A tenant having a right of occupancy shall Grounds of ejectment be liable to be ejected from of occupancy-tenant. his tenancy on any of the following grounds, namely:

- (a) that he has used the land comprised in the tenancy in a manner which renders it unfit for the purposes for which he held it;
- (b) where rent is payable in kind, that he has without sufficient cause failed to cultivate that land in the manner or to the extent customary in the locality in which the land is situate;
- (c) that a decree for an arrear of rent in respect of the tenancy has been passed against him and remains unsatisfied.

40. A tenant not having a right of occupancy, Grounds of ejectment but holding for a fixed term of tenant for a fixed under a decree or contract, term. shall be liable to be ejected from his tenancy at the expiration of that term, and, on any of the following grounds, before the expiration thereof, namely:

- (a) that he has used the land comprised in the tenancy in a manner which renders it

unfit for the purposes for which he held it;

- (b) where rent is payable in kind, that he has without sufficient cause failed to cultivate that land in the manner or to the extent customary in the locality in which the land is situate;

- (c) on any ground which would justify ejectment under the decree or contract.

41. A tenant who has not a right of occupancy, Ejectment of tenant and does not hold for from year to year. a fixed term under a decree or contract, may be ejected at the end of any agricultural year.

PROCEDURE ON EJECTMENT.

42. A tenant shall not be ejected otherwise Restriction on eject- than in execution of a decree ment. for ejectment except in the following cases, namely:

- (a) when a decree for an arrear of rent in respect of his tenancy has been passed against him and remains unsatisfied;
- (b) when the tenant has not a right of occupancy, and does not hold for a fixed term under a decree or contract.

43. In any such case as is mentioned in Application to Revenue- clause (a) or clause (b) of officer for ejectment. the last foregoing section, the landlord may apply to a Revenue-officer for the ejectment of the tenant in the case mentioned in the former clause, or for the service on the tenant of a notice of ejectment in the case mentioned in the latter clause.

44. (1) On receiving the application in any such Ejectment for failure case as is mentioned in the to satisfy decree for ar- former of those clauses the rear of rent. Revenue-officer shall, after such inquiry with respect to the existence of the arrear as he deems necessary, cause a notice to be served on the tenant, stating the date of the decree and the amount due thereunder, and informing him that if he does not pay that amount to the Revenue-officer within fifteen days from receipt of the notice he will be ejected from the land.

(2) If the amount is not so paid, the Revenue-officer shall, subject to the provisions of this Act with respect to the payment of compensation, order the ejectment of the tenant unless good cause is shown to the contrary.

45. (1) On receiving the application of the Ejectment of tenant landlord in any such case as from year to year by is mentioned in clause (b) of notice. section 42, the Revenue-officer shall, if the application is in order and not open to objection on the face of it, cause a notice of ejectment to be served on the tenant.

(2) A notice under sub-section (1) shall not be served after the fifteenth day of November in any year.

(3) The notice shall specify the name of the landlord on whose application it is issued, and describe the land to which it relates, and shall inform the tenant that he must vacate the land before the first day of May next following, or that, if he intends to contest his liability to ejectment, he must institute a suit for that purpose in a Revenue Court within two months from the date of the service of the notice.

*The Punjab Tenancy Bill.**(Chapter IV.—Relinquishment, Abandonment and Ejectment.—Sections 46-52.)*

(4) The notice shall also inform the tenant that if he does not intend to contest his liability to be ejected and he has any claim for compensation on ejectment he should, within two months from the date of the service of the notice, prefer his claim to the Revenue-officer having authority under the next following sub-section to order his ejectment in the circumstances described in that sub-section.

(5) If within two months from the date of the service of the notice the tenant does not institute a suit to contest his liability to be ejected, a Revenue-officer, on the application of the landlord, shall, subject to the provisions of this Act with respect to the payment of compensation, order the ejectment of the tenant:

Provided that the Revenue-officer shall not make the order until he is satisfied that the notice was duly served on the tenant.

(6) If within those two months the tenant institutes a suit to contest his liability to be ejected and fails in the suit, the Court by which the suit is determined shall by its decree direct the ejectment of the tenant.

Power to make rules.

46. The Financial Commissioner may make rules prescribing—

- (a) the form and language of applications and notices under the two last foregoing sections; and
- (b) the manner in which those applications and notices are to be signed and attested.

GENERAL PROVISIONS RESPECTING EJECTMENT.

47. A decree or order for the ejectment of a tenant shall not be executed at any other time than between the first day of May and the fifteenth day of June (both days inclusive), unless the Court making the decree or, where the order is made under section 46, the officer making the order otherwise directs.

48. (1) If in a suit for the ejectment of a tenant on either of the grounds mentioned in clauses (a) and (b) of section 39 or section 40 it appears to the Court that the injury caused by the act or omission on which the suit is based is capable of being remedied, or that an award of compensation will be sufficient satisfaction to the landlord therefor, the Court may, instead of making a decree for the ejectment of the tenant, order him to remedy the injury within a period to be fixed in the order, or order him to pay into Court, within such a period, such compensation as the Court thinks fit.

(2) The Court may from time to time, for special reasons, extend a period fixed by it under sub-section (1).

(3) If within the period, or extended period, as the case may be, fixed by the Court under this section, the injury is remedied or the compensation is paid, a decree for the ejectment of the tenant shall not be made.

49. (1) Where at the time of the proposed ejectment of a tenant from any land his uncultivated and un-gathered crops are standing on any part thereof, he shall

Rights of ejected tenants in respect of crops and land prepared for sowing.

not be ejected from that part until the crops have ripened and he has been allowed a reasonable time to harvest them.

(2) The Court or Revenue-officer decreeing or ordering the ejectment of the tenant may, on the application of the landlord, determine any dispute arising in consequence of the provisions of sub-section (1) between the landlord and the tenant or between the landlord and any person entitled to harvest the crops of the tenant, and may in its or his discretion—

- (a) direct that the tenant pay for the longer occupation of the land secured to him under sub-section (1) such rent as may be fair and equitable, or
- (b) determine the value of the tenant's uncultivated and un-gathered crops, and, on payment thereof by the landlord to the Court or Revenue-officer, forthwith eject the tenant.

(3) When a tenant for whose ejectment proceedings have been taken has, conformably with local usage, prepared for sowing any land comprised in his tenancy, but has not sown or planted crops on that land, he shall be entitled to receive from the landlord before ejectment a fair equivalent in money for the labour and capital expended by him in so preparing the land, and the Court or Revenue-officer before which or whom the proceedings are pending shall, on the application of the tenant, determine the sum payable to the tenant under this sub-section and stay his ejectment until that sum has been paid to him.

RELIEF FOR WRONGFUL DISPOSSESSION.

Relief for wrongful dispossession or ejectment. 50. In either of the following cases, namely:

- (a) if a tenant has been dispossessed without his consent of his tenancy or any part thereof otherwise than in execution of a decree or than in pursuance of an order under section 44 or section 45,
- (b) if a tenant who, not having instituted a suit under section 45, has been ejected from his tenancy or any part thereof in pursuance of an order under that section denies his liability to be ejected,

the tenant may, within one year from the date of his dispossession or ejectment, institute a suit for recovery of possession or occupancy, or for compensation, or for both.

51. Possession of a tenancy or of any land comprised in a tenancy shall not be recoverable under section 9, Act I, of 1877, by a tenant dispossessed thereof.

1 of 1877.

Power to vary Dates prescribed by this Chapter.

52. (1) The Local Government may, for all or any of the territories under its administration, by notification fix for the purposes of sections 36, 45 and 47, or of any of those sections, any other dates than those specified therein.

(2) A notification under this section shall not take effect till after the expiration of six months from the date of the publication thereof.

*The Punjab Tenancy Bill.**(Chapter V.—Alienation of, and Succession to, Right of Occupancy.—Sections 53-59.)*

CHAPTER V.

ALIENATION OF, AND SUCCESSION TO, RIGHT OF OCCUPANCY.

Alienation.

53. (1) A tenant having a right of occupancy under section 5 may transfer that right by sale, gift or mortgage, subject to the conditions mentioned in this section.

Private transfer of right of occupancy under section 5 by tenant.

(2) If he intends to transfer the right by sale, gift, mortgage by conditional sale or usufructuary mortgage, he shall cause notice of his intention to be served on his landlord through a Revenue-officer, and shall defer proceeding with the transfer for a period of one month from the date on which the notice is served.

(3) Within that period of one month the landlord may claim to purchase the right at such value as a Revenue-officer may, on application made to him in this behalf, fix.

(4) When the application to the Revenue-officer is to fix the value of a right of occupancy which is already mortgaged, he shall fix the value of the right as if it were not mortgaged.

(5) The landlord shall be deemed to have purchased the right if he pays the value to the Revenue-officer within such time as that officer appoints.

(6) On the value being so paid, the Revenue-officer shall, on the application of the landlord, put the landlord in possession of the right so purchased.

(7) If the right of occupancy was already mortgaged, it shall pass to the landlord unincumbered by the mortgage, but the mortgage-debt shall be a charge on the purchase-money.

(8) If there is no such charge as aforesaid, the Revenue-officer shall, subject to any directions which he may receive from any Court, pay the purchase-money to the tenant.

(9) If there is such a charge, the Revenue-officer shall, subject as aforesaid, either apply in discharge of the mortgage-debt so much of the purchase-money as is required for that purpose and pay the balance, if any, to the tenant, or retain the purchase-money pending the decision of a Civil Court as to the person or persons entitled thereto.

(10) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Revenue-officer under the two last foregoing sub-sections, but nothing in this sub-section shall prevent any person entitled to receive the whole or any part of the purchase-money from recovering it from a person to whom it has been paid by a Revenue-officer.

54. Where a mortgagee of a right of occupancy under section 5 proposes to foreclose his mortgage, the provisions of the last foregoing section shall, so far as they can be made applicable, apply as if the mortgagee were the tenant.

Procedure on foreclosure of mortgage of right of occupancy under section 5.

55. (1) A right of occupancy under section 5 may be sold in execution of a decree or order of a Court;

Sale of right of occupancy under section 5 in execution of decree.

(2) But notice of an intended sale of any such right shall be given by the Court to the landlord, and, if at any time before the close of the day on which the sale takes place the landlord pays to the Court or to the officer conducting the sale a deposit of twenty-five per centum on the highest bid made at the sale, he shall be declared to be the purchaser instead of the person who made that bid.

56. A right of occupancy under any other section than section 5 shall not be attached or sold in execution of a decree or order of any Court or, without the previous consent in writing of the landlord, be transferred by private contract.

Transfer of right of occupancy under any other section than section 5.

57. When a right of occupancy has been transferred by sale, gift or usufructuary mortgage to a person other than the landlord, that person shall, in respect of the land in which the right subsists, have the same rights, and be subject to the same liabilities, as the tenant to whom before the transfer the right belonged had and was subject to.

Rights and liabilities transferred by sale, gift or usufructuary mortgage to person other than the landlord.

58. (1) A tenant having a right of occupancy in land may, subject to the provisions of this Act and to the conditions of any written contract between him and his landlord, sublet the land or any part thereof for any term not exceeding seven years.

Subletting.

(2) A person to whom land is sublet by a tenant having a right of occupancy therein shall, in respect of that land, and so far as regards the landlord, be, jointly with the tenant, subject to all the liabilities of the tenant under this Act.

Succession.

59. (1) When a tenant having a right of occupancy in any land dies, the right shall devolve—

Succession to right of occupancy.

(a) on his male lineal descendants, if any, in the male line of descent, and

(b) failing such descendants, on his widow, if any, until she dies or re-marries, or abandons the land or is under the provisions of this Act ejected therefrom, and

(c) failing such descendants and widow, or, if the deceased tenant left a widow, then when her interest terminates under clause (b) of this sub-section, on his male collateral relatives in the male line of descent from the common ancestor of the deceased tenant and those relatives:

Provided, with respect to clause (c) of this sub-section, that the common ancestor occupied the land.

(2) As among descendants and collateral relatives claiming under sub-section (1), the right shall, subject to the provisions of that sub-section, devolve as if it were land left by the deceased in the village in which the land subject to the right is situate.

(3) When the widow of a deceased tenant succeeds to a right of occupancy, she shall not transfer the right by sale, gift or mortgage, or by sub-lease for a term exceeding one year.

(4) If the deceased tenant has left no such persons as are mentioned in sub-section (1) on whom his right of occupancy may devolve under that sub-section, the right shall lapse to the landlord.

The Punjab Tenancy Bill.

(Chapter V.—Alienation of, and Succession to, Right of Occupancy.—Section 60. Chapter VI.—Improvements and Compensation.—Sections 61-70.)

Nullity of Irregular Transfers.

Nullity of irregular transfer of right of occupancy.

60. Any transfer made of a right of occupancy in contravention of the foregoing provisions of this Chapter shall be void.

CHAPTER VI.

IMPROVEMENTS AND COMPENSATION.

Improvements by Landlords.

61. (1) Without the previous permission of the Collector a landlord shall not make an improvement on the tenancy of a tenant having a right of occupancy.

(2) If a landlord desires to make such an improvement he may apply to the Collector for permission to make it, and the Collector shall, before making an order on the application, hear the objections, if any, of the tenant.

(3) In making an order on an application under sub-section (1) the Collector shall be guided by such rules, if any, as the Local Government may, with the previous sanction of the Governor-General in Council, make in this behalf.

62. (1) When a landlord has, under the provisions of the last foregoing section, made an improvement on the tenancy of a tenant having a right of occupancy, he may apply to the Collector for an enhancement of the rent of the tenant.

(2) If the tenant is a tenant to whom section 20 applies, the Collector shall enhance his rent to the share or rates paid by tenants, having a similar right of occupancy, for land of a similar description and with similar advantages.

(3) If the tenant is a tenant to whom section 22 applies, the Collector shall enhance his rent to such amount as the tenant would be liable to pay under that section if the land-revenue were reassessed.

(4) When the improvement ceases to exist, the Collector may, on the application of the tenant, reduce the tenant's rent—

(a) in the case of a tenant to whom sub-section (2) applies, to the share or rates paid by tenants, having a similar right of occupancy, for land of a similar description and with similar advantages, and

(b) in the case of a tenant to whom sub-section (3) applies, to such an amount as the tenant would be liable to pay if the land-revenue were reassessed.

(5) Section 25 shall be construed as applying to an application under this section, and a suit shall not lie in any Court for any purpose for which an application might be made under this section.

Improvements by Tenants.

63. A tenant having a right of occupancy is entitled to make improvements on his tenancy.

64. (1) A tenant not having a right of occupancy may make improvements on his tenancy with the assent of his landlord.

(2) If at any time the question arises whether or not the landlord assented to the making of an improvement by a tenant not having a right of occupancy, the assent may be inferred from circumstances.

65. Improvements made by a tenant before the commencement of this Act shall be deemed to have been made in accordance with this Act, unless in the case of a tenant not having a right of occupancy it is shown that the improvement was made in contravention of a written agreement between him and his landlord.

66. A tenant ejected in execution of a decree, or in pursuance of a notice of ejectment, shall not be entitled to compensation for any improvement made by him after the institution of the suit, or service of the notice, which resulted in his ejectment.

67. If a landlord tenders to a tenant a lease of his tenancy for a term of not less than twenty years from the date of the tender at the rent then paid by the tenant, or at such other rent as may be agreed on, the tender, if accepted by the tenant, shall bar any claim by him to compensation in respect of improvements previously made on the tenancy.

68. Subject to the foregoing provisions of this Chapter, a tenant who has made an improvement on his tenancy in accordance with this Act shall not be ejected, and the rent payable by him shall not be enhanced, until he has received compensation for the improvement.

Compensation for Disturbance of Clearing Tenants.

69. (1) Any tenant who has cleared and brought under cultivation waste-land in which he has not a right of occupancy shall, if ejected from that land, be entitled to receive from the landlord as compensation for disturbance, in addition to any compensation for improvements, a sum to be determined by a Revenue-officer in accordance with the merits of the case, but not exceeding five years' rent of the land;

Provided that a tenant who is a joint owner of land to which this section applies shall not be entitled to compensation for disturbance on ejectment from the land or any part thereof.

(2) If rent has been paid for the land by division or appraisement of the produce, or by cash-rates fixed with reference to the nature of the crops grown, or if no rent, or no rent other than the land-revenue of the land and the rates and cesses chargeable thereon has been paid therefor, the compensation may be computed as if double the amount of the land-revenue of the land were the annual rent thereof.

Procedure in determining Compensation.

70. (1) In every suit by a tenant to contest his liability to ejectment or by a landlord to eject a tenant or to enhance his rent, the Court shall direct

*The Punjab Tenancy Bill.**(Chapter VI.—Improvements and Compensation.—Sections 71-74. Chapter VII.—Jurisdiction and Procedure.—Sections 75-76.)*

the tenant to file a statement of his claim, if any, to compensation for improvements or for disturbance and of the grounds thereof.

(2) If the Court decrees the ejectment of the tenant or the enhancement of his rent, it shall determine the amount of compensation, if any, due to the tenant, and shall stay execution of the decree until the landlord pays into Court that amount less any arrears of rent or costs proved to the satisfaction of the Court to be due to him from the tenant.

71. A tenant on whom a notice of ejectment has been served may, if he has not instituted a suit to contest his liability to be ejected, apply to the Revenue-officer who issued the notice to determine the amount of compensation due to him for improvements or for disturbance, or for both, and the Revenue-officer shall determine the amount, if any, accordingly and stay the ejectment of the tenant until the landlord pays to the Revenue-officer the amount so determined less any arrears of rent or costs proved to the satisfaction of the Revenue-officer to be due to the landlord from the tenant.

72. In estimating the compensation to be awarded under this Chapter to a tenant for an improvement, the Court or Revenue-officer shall have regard to—

- (a) the amount by which the value or the produce of the tenancy, or the value of that produce, is increased by the improvement;
- (b) the condition of the improvement and the probable duration of its effects;
- (c) the labour and capital required for the making of such an improvement;
- (d) any reduction or remission of rent or other advantage allowed to the tenant by the landlord in consideration of the improvement; and
- (e) in the case of a reclamation, or of the conversion of unirrigated into irrigated land, the length of time during which the tenant has had the benefit of the improvement.

73. (1) The compensation shall be made by payment in money, unless the parties agree that it be made in whole or in part by the grant of a beneficial lease of land or in some other way.

(2) If the parties so agree, the Court or Revenue-officer shall make an order accordingly.

Relief in case of Ejectment before Determination of Compensation.

74. (1) If from any cause the amount of compensation payable to a tenant—

- (a) under this Chapter for improvements or disturbance; or
- (b) under section 49 for the value of uncut or ungathered crops or the preparation of land for sowing;

has not been determined before the tenant is ejected, the ejectment shall not be invalidated by

reason of the omission, but the Court or Revenue-officer which decreed or who ordered the ejectment may, on application made by the tenant within one year from the date of the ejectment, correct the omission by making in favour of the tenant an order for the payment to him by the landlord of such compensation as the Court or officer may determine the tenant to be entitled to.

(2) An order made under sub-section (1) may be executed in the same manner as a decree for money may be executed by a Revenue Court.

CHAPTER VII.

JURISDICTION AND PROCEDURE.

Jurisdiction.

75. (1) There shall be the same classes of Revenue-officers under this Act as under the Punjab Land-revenue Act, 1887, and, in the absence of any order of the Local Government to the contrary, a Revenue-officer of any class having jurisdiction within any local limits under that Act shall be a Revenue-officer of the same class having jurisdiction within the same local limits under this Act.

(2) The expressions "Collector" and "Financial Commissioner" have the same meaning in this Act as in the Punjab Land-revenue Act, 1887.

76. (1) The following applications and proceedings shall be disposed of by Revenue-officers as such, and no Court shall take cognizance of any dispute or matter with respect to which any such application or proceeding might be made or had:

FIRST GROUP.

- (a) proceedings under section 27 for the adjustment of rents expressed in terms of the land-revenue;
- (b) proceedings relating to the remission and suspension of rent under section 30;
- (c) applications under section 43 for the ejectment of a tenant against whom a decree for an arrear of rent in respect of his tenancy has been passed and remains unsatisfied;
- (d) applications under section 45, sub-section (5), for the ejectment of a tenant on whom a notice of ejectment has been served and who has not instituted a suit to contest his liability to be ejected and has claimed compensation under section 71;
- (e) applications under section 53 or section 54 for the fixing of the value of a right of occupancy;
- (f) applications under section 53 or section 54 by landlords for possession of land subject to a right of occupancy sought to be transferred or foreclosed;
- (g) proceedings under Chapter VI with respect to the award of compensation for improvements or disturbance;

SECOND GROUP.

- (h) applications under section 17 with respect to the division or appraisement of produce;

*The Punjab Tenancy Bill.**(Chapter VII.—Jurisdiction and Procedure.—Sections 77-78.)*

- (i) applications under section 45, sub-section (5), for the ejectment of a tenant on whom a notice of ejectment has been served and who has not instituted a suit to contest his liability to be ejected and has not claimed compensation under section 71;

(j) applications for the determination—

- (i) under section 49 of the rent payable for land occupied by crops uncut or ungathered at the time of an order being made for the ejectment of a tenant, or
- (ii) under section 49 or section 74 of the value of such crops or of the sum payable to the tenant for labour and capital expended by him in preparing land for sowing;

THIRD GROUP.

- (k) applications under section 31 by tenants to deposit rent;
- (l) applications under section 36 for service of notice of relinquishment;
- (m) applications under section 43 for service of notice of ejectment;
- (n) applications under section 53 or section 54 for service of notice of intended transfer or foreclosure.

(2) Except as otherwise provided by any rule made by the Financial Commissioner in this behalf,—

- (a) a Collector or an Assistant Collector of the first grade may dispose of any of the applications and proceedings mentioned in sub-section (1);
- (b) an Assistant Collector of the second grade, not being a Naib-tahsildar, may dispose of any of the applications mentioned in the second and third groups of that sub-section; and
- (c) a Naib-tahsildar, when invested with the powers of an Assistant Collector of the second grade, may dispose of any of the applications mentioned in the third group of that sub-section.

77. (1) When a Revenue-officer is exercising jurisdiction with respect to any such suit as is described in sub-section (3), or with respect to an appeal or other proceeding arising out of any such suit, he shall be called a Revenue Court.

(2) There shall be the same classes of Revenue Courts as of Revenue-officers under this Act, and, in the absence of any order of the Local Government to the contrary, a Revenue-officer of any class having jurisdiction within any local limits under this Act shall be a Revenue Court of the same class having jurisdiction within the same local limits.

(3) The following suits shall be instituted in and heard and determined by Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted:—

FIRST GROUP.

- (a) suits for enhancement or reduction of rent under section 24;

- (b) suits for addition to or abatement of rent under section 28 or for commutation of rent;

- (c) suits under section 34 for the determination of rent or other sum on the expiration of the term of an assessment of land-revenue;

SECOND GROUP.

- (d) suits to establish a claim to a right of occupancy, or to prove that a tenant has not such a right;
- (e) suits under Chapter IV for the ejectment of a tenant having a right of occupancy, or holding for a fixed term under a decree or contract;
- (f) suits under section 45 to contest liability to ejectment when notice of ejectment has been served;
- (g) suits under section 50 for recovery of possession or occupancy, or for compensation, or for both;
- (h) suits to set aside a transfer made of a right of occupancy in contravention of the provisions of this Act, or to dispossess a person to whom such a transfer has been made, or for both purposes;
- (i) suits for sums payable on account of village-cesses or village-expenses or for a share of the emoluments of a village-officer;
- (j) suits by co-sharers in an estate or holding for a share of the profits thereof or for a settlement of accounts;
- (k) suits for the recovery of over-payments of rent or land-revenue or of any other demand for the recovery of an arrear of which a suit lies in a Revenue Court under this sub-section;

THIRD GROUP.

- (l) suits for arrears of rent, or the money equivalent of rent, or for payments claimed on account of rights in or over land or in water, including rights of irrigation, rights over fisheries, rights of pasturage and forest-rights;
- (m) suits for sums payable on account of land-revenue or of any other demand recoverable as an arrear of land-revenue under any enactment for the time being in force, and by superior landowners for other sums due to them as such.
- (4) Except as otherwise provided by any rule made by the Financial Commissioner in this behalf,—
- (a) a Collector may hear and determine any of the suits mentioned in sub-section (3);
- (b) an Assistant Collector of the first grade may hear and determine any of the suits mentioned in the second and third groups of that sub-section, and, if he has by name been specially empowered in this behalf by the Local Government, any of the suits mentioned in the first group; and
- (c) an Assistant Collector of the second grade may hear and determine any of the suits mentioned in the third group.

Administrative Control.

78. (1) The general superintendence and control over all other Revenue-officers and Revenue Courts shall be vested in, and all such officers and Courts

*The Punjab Tenancy Bill.**(Chapter VII.—Jurisdiction and Procedure.—Sections 79-84.)*

shall be subordinate to, the Financial Commissioner.

(2) Subject to the general superintendence and control of the Financial Commissioner, a Commissioner shall control all other Revenue-officers and Revenue Courts in his division.

(3) Subject as aforesaid and to the control of the Commissioner, a Collector shall control all other Revenue-officers and Revenue Courts in his district.

79. (1) The Financial Commissioner or a Commissioner or Collector may by written order distribute, in such manner as he thinks fit, any business cognizable by any Revenue-officer or Revenue Court under his control.

(2) The Financial Commissioner or a Commissioner or Collector may withdraw any case pending before any Revenue-officer or Revenue Court under his control, and either dispose of it himself, or by written order refer it for disposal to any other Revenue-officer or Revenue Court under his control.

(3) An order under sub-section (1) or sub-section (2) shall not empower any Revenue-officer or Revenue Court to exercise any powers or deal with any business which he or it would not be competent to exercise or deal with within the local limits of his or its own jurisdiction.

Appeal, Review and Revision.

80. An appeal shall lie from an original or appellate order or decree made under this Act by a Revenue-officer or Revenue Court, as follows, namely:

- (a) to the Collector when the order or decree is made by an Assistant Collector of either grade;
- (b) to the Commissioner when the order or decree is made by a Collector;
- (c) to the Financial Commissioner when the order or decree is made by a Commissioner:

Provided that—

- (i) an appeal from a decree or order made by an Assistant Collector of the first grade specially empowered by name in that behalf by the Local Government in a suit mentioned in the first group of sub-section (3) of section 77 shall lie to the Commissioner and not to the Collector;
- (ii) when an original order or decree is confirmed on first appeal, a further appeal shall not lie;
- (iii) when any such order or decree is modified or reversed on appeal by the Collector, the order or decree made by the Commissioner on further appeal to him shall be final.

81. The period of limitation for an appeal under the last foregoing section shall run from the date of the order or decree appealed against, and shall be as follows, that is to say:

- (a) when the appeal lies to the Collector—thirty days;
- (b) when the appeal lies to the Commissioner—sixty days;
- (c) when the appeal lies to the Financial Commissioner—ninety days.

82. (1) A Revenue-officer, as such, may either of his own motion or on the application of any party interested, review, and on so reviewing modify, reverse or confirm any order passed by himself or by any of his predecessors in office:

Provided as follows:

(a) when a Commissioner or Collector thinks it necessary to review any order which he has not himself passed, and when a Revenue-officer of a class below that of Collector proposes to review any order whether passed by himself or by any of his predecessors in office, he shall first obtain the sanction of the Revenue-officer to whose control he is immediately subject;

(b) an application for review of an order shall not be entertained unless it is made within ninety days from the passing of the order, or unless the applicant satisfies the Revenue-officer that he had sufficient cause for not making the application within that period;

(c) an order shall not be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order;

(d) an order against which an appeal has been preferred shall not be reviewed.

(2) For the purposes of this section, the Collector shall be deemed to be the successor in office of any Revenue-officer of a lower class who has left the district or has ceased to exercise powers as a Revenue-officer, and to whom there is no successor in office.

(3) An appeal shall not lie from an order refusing to review, or confirming on review, a previous order.

83. In the computation of the period for an appeal from, or an application for the review of, an order under this Act, the limitation therefor shall be governed by the Indian Limitation Act, 1877.

84. (1) The Financial Commissioner may at any time call for the record of any case pending before, or disposed of by, any Revenue-officer or Revenue Court subordinate to him.

(2) A Commissioner or Collector may call for the record of any case pending before, or disposed of by, any Revenue-officer or Revenue Court under his control.

(3) If in any case in which a Commissioner or Collector has called for a record he is of opinion that the proceedings taken or the order or decree made should be modified or reversed, he shall report the case, with his opinion thereon, for the orders of the Financial Commissioner.

(4) The Financial Commissioner may in any case called for by himself under sub-section (1) or reported to him under sub-section (3) pass such order as he thinks fit:

Provided that he shall not under this section—

- (a) modify or reverse an order or decree without giving the parties affected thereby an opportunity of being heard, or

*The Punjab Tenancy Bill.**(Chapter VII.—Jurisdiction and Procedure.—Sections 85-90.)*

- (b) modify or reverse a decree or order of a Revenue Court, unless that Court appears to him to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or not to have acted in the exercise of its jurisdiction according to law.

Procedure.

85. (1) The Local Government may make rules Procedure of Revenue Courts. consistent with this Act for regulating the procedure of Revenue-officers under this Act in cases in which a procedure is not prescribed by this Act.

(2) The rules may provide, among other matters, for the mode of enforcing orders of ejection from, and delivery of possession of, immovable property, and rules providing for those matters may confer on a Revenue-officer all or any of the powers in regard to contempts, resistance and the like which a Civil Court may exercise in the execution of a decree whereby it has adjudged ejection from, or delivery of possession of, such property.

(3) The rules may also provide for the mode of executing orders as to costs, and may adapt to proceedings under this Act all or any of the provisions of the Punjab Land-revenue Act, 1887, with respect to arbitration.

86. (1) Appearances before a Revenue-officer Persons by whom appearances may be made before Revenue-officers as such and not as Revenue Courts. as such, and applications to and acts to be done before him, under this Act may be made or done—

(a) by the parties themselves, or

(b) by their recognized agents or a legal practitioner:

Provided that the employment of a recognized agent or legal practitioner shall not excuse the personal attendance of a party to any proceeding in any case in which personal attendance is specially required by an order of the officer.

(2) For the purposes of sub-section (1), recognized agents shall be such persons as the Local Government may by notification declare in this behalf.

(3) The fees of a legal practitioner shall not be allowed as costs in any proceeding before the Revenue-officer under this Act, unless that officer considers, for reasons to be recorded by him in writing, that the fees should be allowed.

87. (1) A Revenue-officer may give and ap- Costs. portion the costs of any proceeding under this Act in any manner he thinks fit;

(2) But if he orders that the costs of any such proceeding shall not follow the event, he shall record his reasons for the order.

88. (1) The Local Government may, with the Procedure of Revenue Courts. previous sanction of the Governor-General in Council, make rules consistent with this Act for regulating the procedure of Revenue Courts in matters under this Act for which a procedure is not prescribed thereby, and may by any such rule direct that any provisions of the Code of Civil Procedure shall apply, with or without modification, to all or any classes of cases before those Courts.

(2) Until rules are made under sub-section (1), and subject to those rules when made and to the provisions of this Act,—

(a) the Code of Civil Procedure shall, so far as it is applicable, apply to all proceedings in Revenue Courts whether before or after decree; and

(b) the Financial Commissioner shall, in respect of those proceedings, be deemed to be the High Court within the meaning of that Code, and shall, subject to the provisions of this Act, exercise, as regards the Courts under his control, all the powers of a High Court under the Code.

89. (1) A Revenue-officer or Revenue Court Power of Revenue officer or Revenue Court to summon persons. may summon any person whose attendance he or it considers necessary for the purpose of any application, suit or other business before him or it as a Revenue-officer or Revenue Court.

(2) A person so summoned shall be bound to appear at the time and place mentioned in the summons, in person or, if the summons so allows, by his recognized agent or a legal practitioner.

(3) The person attending in obedience to the summons shall state the truth upon any matter respecting which he is examined or makes statements, and produce such documents and other things relating to any such matter as the Revenue-officer or Revenue Court may require.

90. (1) A summons issued by a Revenue-officer Mode of service of summons. or Revenue Court shall, if practicable, be served (a) personally on the person to whom it is addressed, or failing him on (b) his recognized agent, or (c) an adult male member of his family usually residing with him.

(2) If service cannot be so made, or if acceptance of service so made is refused, the summons may be served by posting a copy thereof at the usual or last known place of residence of the person to whom it is addressed, or, if that person does not reside in the district in which the Revenue-officer is employed or the Revenue Court is held, and the case to which the summons relates has reference to land in that district, then by posting a copy of the summons on some conspicuous place in or near the estate wherein the land is situate.

(3) If the summons relates to a case in which persons having the same interest are so numerous that personal service on all of them is not reasonably practicable, it may, if the Revenue-officer or Revenue Court so directs, be served by delivery of a copy thereof to such of those persons as the officer or Court nominates in this behalf and by proclamation of the contents thereof for the information of the other persons interested.

(4) A summons may, if the Revenue-officer or Revenue Court so directs, be served on the person named therein, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the person and registered under Part III of the Indian Post Office Act, 1866.

(5) When a summons is so forwarded in a letter and it is proved that the letter was properly addressed and duly posted and registered, the officer or Court may presume that it was served

*The Punjab Tenancy Bill.**(Chapter VII.—Jurisdiction and Procedure.—Sections 91-100.)*

at the time when the letter would be delivered in the ordinary course of post.

91. A notice, order or proclamation, or copy of any such document, issued by a Revenue-officer or Revenue Court for service on any person shall be served in the manner provided in the last foregoing section for the service of a summons.

92. When a proclamation relating to any land is issued by a Revenue-officer or Revenue Court, it shall, in addition to any other mode of publication which may be prescribed by any enactment for the time being in force, be made by beat of drum or other customary method, and by the posting of a copy thereof on a conspicuous place in or near the land to which it relates.

93. (1) Any number of tenants cultivating in the same estate may, in the discretion of the Revenue-officer or Revenue Court and subject to any rules which the Local Government may make in this behalf, be made parties to any proceeding under Chapter III;

(2) But a decree or order shall not be made in any such proceeding unless the Revenue-officer or Revenue Court is satisfied that all the parties thereto have had an opportunity of appearing and being heard.

(3) A decree or order made in any such proceeding shall specify the extent to which each of the tenants is affected thereby.

94. Nothing in section 424 of the Code of Civil Procedure, or in the first or second paragraph of section 433 of that Code, or in section 36 of the Punjab Municipal Act, 1884, shall be construed to apply to a suit of a class mentioned in section 77 of this Act.

95. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded by it, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment of the money, it shall be paid to the plaintiff on his application to the Court therefor.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

(5) When a defendant pays money into Court under this section, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

96. A Court passing a decree for an arrear of rent may, on the oral application of the decreeholder, order execution thereof against the moveable property of the tenant, and against any uncut or ungathered crops on the tenancy in respect of which the arrear is decreed.

97. (1) A tenant shall not during the continuance of his occupancy be liable to imprisonment on the application of his landlord in execution of a decree for an arrear of rent.

98. (1) If, in any proceeding pending before a Revenue Court exercising original, appellate or revisional jurisdiction, it appears to the Court that any question in issue is more proper for decision by a Civil Court, the Revenue Court may, with the previous sanction of the Court, if any, to the control of which it is immediately subject, by order in writing, require any party to the proceeding to institute, within such time as it may fix in this behalf, a suit in the Civil Court with a view to obtaining a decision on the question, and, if he fails to comply with the requisition, may decide the question as it thinks fit.

(2) If the party institutes the suit in compliance with the requisition, the Revenue Court shall dispose of the proceeding pending before it in accordance with the final decision of the Civil Court of first instance or appeal, as the case may be.

99. (1) If the presiding officer of a Civil or Revenue Court in which a Court questions as to suit has been instituted doubts whether he is precluded by this Act from taking cognizance of the suit, he may refer the matter through the Divisional Judge or Commissioner, or, if he is a Divisional Judge or Commissioner, directly to the Chief Court.

(2) On any such reference being made, the Chief Court may order the presiding officer either to proceed with the suit or to return the plaint for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit.

(3) The order of the Chief Court on any such reference shall be conclusive as against persons who are not parties to the suit as well as against persons who are parties thereto.

100. (1) In either of the following cases, namely:

(a) if it appears to a Civil Court that a Court under its control has determined a suit of a class mentioned in section 77 which under the provisions of that section should have been heard and determined by a Revenue Court, or

(b) if it appears to a Revenue Court that a Court under its control has determined a suit which should have been heard by a Civil Court,

the Civil Court or Revenue Court, as the case may be, shall submit the record of the suit to the Chief Court.

XIV of 1882.

Exception of suits under this Act from operation of certain enactments.

XIII of 1884.

jab Municipal Act, 1884, shall be construed to apply to a suit of a class mentioned in section 77 of this Act.

Payment into Court of money admitted to be due to third person.

Power of Chief Court to validate proceedings had under mistake as to jurisdiction.

*The Punjab Tenancy Bill.**(Chapter VII.—Jurisdiction and Procedure.—Sections 101-106.)*

(2) If on perusal of the record it appears to the Chief Court that the suit was so determined in good faith, and that the parties have not been prejudiced by the mistake as to jurisdiction, the Chief Court may order that the decree be registered in the Court which had jurisdiction.

(3) If it appears to the Chief Court, otherwise than on submission of a record under sub-section (1), that a Civil Court under its control has determined a suit of a class mentioned in section 77 which under the provisions of that section should have been heard and determined by a Revenue Court, the Chief Court may pass any order which it might have passed if the record had been submitted to it under that sub-section.

(4) With respect to any proceeding subsequent to decree, the Chief Court may make such order for its registration in a Revenue Court or Civil Court as in the circumstances appears to be just and proper.

(5) An order of the Chief Court under this section shall be conclusive as against persons who were not parties to the suit or proceeding as well as against persons who were parties thereto, and the decree or proceeding to which the order relates shall have effect as if it had been made or had by the Court in which the order has required it to be registered.

(6) The provisions of this section shall apply to any suit instituted on or after the first day of November, 1884, and to proceedings arising out of any such suit.

Miscellaneous.

101. (1) An Assistant Collector may exercise his powers under this Act at any place within the limits of the district in which he is employed.

(2) Any other Revenue officer or Revenue Court may only exercise his or its powers under this Act within the local limits of his or its jurisdiction.

102. (1) The Financial Commissioner, with the approval of the Local Government, shall publish in the local official Gazette before the commencement of each calendar year a list of days to be observed in that year as holidays by all or any Revenue-officers and Revenue Courts.

(2) A proceeding had before a Revenue-officer or Revenue Court on a day specified in the list as a day to be observed by the officer or Court as a holiday shall not be invalid by reason only of its having been had on that day.

103. When a Collector dies or is disabled from performing his duties, the officer who succeeds temporarily to the chief executive administration of the district under any orders which may be generally or specially issued by the Local Government in this behalf shall be deemed to be a Collector under this Act.

104. When a Revenue-officer of any class who, either as such or as a Revenue Court, has under the foregoing provisions of this Act any powers to be exercised in any local area, is transferred from that local area to another as

a Revenue-officer or Revenue Court of the same or a higher class, he shall continue to exercise those powers in that other local area, unless the Local Government otherwise directs or has otherwise directed.

105. (1) The Local Government may confer on any person—

(a) all or any of the powers of a Financial Commissioner, Commissioner or Collector under the provisions of this Act, or

(b) all or any of the powers with which an Assistant Collector of either grade is, or may be, invested under those provisions,

and may withdraw any powers so conferred.

(2) A person on whom powers are conferred under sub-section (1) shall exercise those powers within such local limits and in such classes of cases as the Local Government may direct, and, except as otherwise directed by the Local Government, shall for all purposes connected with the exercise thereof be deemed a Financial Commissioner, Commissioner, Collector or Assistant Collector, as the case may be.

(3) Before conferring powers on the Judge of a Civil Court under sub-section (1), the Local Government shall consult the Chief Court.

(4) If any of the powers of a Collector under section 78, section 79, section 80 or section 82 are conferred on an Assistant Collector, they shall, unless the Local Government by special order otherwise directs, be exercised by him subject to the control of the Collector.

106. (1) The Financial Commissioner, may, in addition to the other rules which may be made by him under this Act, make rules, consistent with this Act and any other enactment for the time being in force,—

(a) determining, notwithstanding anything in any record-of-rights, the number and amount of the instalments, and the times, by and at which rent is to be paid;

(b) for the guidance of Revenue-officers in determining, for the purposes of this Act, the amount of the land-revenue of any land;

(c) prescribing, for all or any of the territories to which this Act extends, the periods during which, in proceedings held under this Act, a Revenue-officer or Revenue Court is not, except for reasons of urgency to be recorded, to issue any process of arrest against a tenant or against a landowner who cultivates his own land;

(d) regulating the procedure in cases where persons are entitled to inspect records of Revenue-offices or Revenue Courts, or to obtain copies of the same, and prescribing the fees payable for searches and copies;

(e) prescribing forms for such books, entries, statistics and accounts as the Financial Commissioner thinks necessary to be kept, made or compiled in Revenue-offices or Revenue Courts or submitted to any authority;

The Punjab Tenancy Bill.
(Chapter VII.—Jurisdiction and Procedure.—Sections 107-108.
The Schedule.)

- (f) declaring what shall be the language of any of those offices and Courts, and determining in what cases persons practising in those offices and Courts shall be permitted to address the presiding officers thereof in English; and
- (g) generally for the guidance of Revenue-officers and other persons in matters connected with the enforcement of this Act.
- (2) Until rules are made under clause (a) of sub-section (1), rent shall be payable by the instalments and at the times by and at which it is now payable.
- (3) Rules made by the Financial Commissioner under this or any other section of this Act shall not take effect until they have been sanctioned by the Local Government.
107. The power to make any rules under this Act is subject to the control of the Governor-General in Council, and to the condition of the rules being made after previous publication.
108. All powers conferred by this Act on the Financial Commissioner may be exercised from time to time as occasion requires.
- Powers exercisable by Financial Commissioner from time to time.

THE SCHEDULE.

(See section 2.)

ENACTMENTS REPEALED.

| Number and year. | Title. | Extent of repeal. |
|---|--|---|
| 1 | 2 | 3 |
| <i>Acts of the Governor-General in Council.</i> | | |
| XXVIII of 1868. | Punjab Tenancy Act. | The whole. |
| VIII of 1873 | Northern India Canal and Drainage Act. | Sections 40 to 43, both inclusive. |
| XIV of 1875 | Punjab Judicial Administration Act. | So much as has not been repealed. |
| XVIII of 1884. | Punjab Courts Act. | Section 3, clauses (1), (2), (4), (5), (6) and (7); the whole of Chapter V; the last seventeen words of sub-section (1) of section 67; section 70 so far as regards Revenue Courts; and section 75. |

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend and declare the Land-revenue Law of the Punjab was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 27th July, 1887:

We, the undersigned, Members of the Select Committee to which the Bill to amend and declare the Land-revenue Law of the Punjab was referred, have considered the Bill and the papers noted on the margin, and have now the honour to submit this our Report, with the Bill as revised by us annexed thereto.

2. In January last the Government of the Punjab appointed a Committee under the presidency of Colonel Sir William Davies to sit at Lahore and report on the Bill with reference to the opinions which had been submitted to that Government. This Committee, which we will hereafter refer to as the Lahore Committee, submitted a report which has been most useful to us in revising the Bill. Having preliminarily considered the Bill in Calcutta with Sir William Davies, we had the Bill as amended by us there re-printed, and we have now considered and revised this re-print in Simla with the Hon'ble Colonel Wace, who succeeded Sir William Davies in May last as Senior Financial Commissioner of the Punjab and has since been in charge of the Bill.

3. Where sections or Chapters are cited in italics at the commencement of any of the following paragraphs, they are, where the contrary is not stated, the sections and Chapters of the Bill as introduced.

4. *Section 1, sub-section (4).*—This sub-section has been shortened with reference to section 4 of the General Clauses Act, 1857.

5. *Section 2, sub-section (3).*—We have left pending proceedings to the operation of section 6 of the General Clauses Act, 1858.

6. *Section 3.*—We have, on the suggestion of the Lahore Committee, substituted a separate section (section 4 of the Bill as revised) for the definition of "land".

The report of that Committee has also suggested to us a revised definition of "village-cess", and we have set forth at length definitions of certain expressions occurring in the Tenancy Bill.

7. *Chapter II.*—We have transferred to the Tenancy Bill the provisions relating to the discharge by Revenue-officers and Revenue Courts of their functions under that Bill.

We have also, with the concurrence of the Local Government, adopted for the sake of convenience the expressions "Collector" and "Assistant Collector" instead of "Deputy Commissioner" and "subordinate Revenue-officer", and provided that Revenue-officers subordinate to the Collector shall be graded in two classes only.

In incorporating in the Bill the provisions of the Punjab Courts Act, 1884, relating to the appointment of a second Financial Commissioner we have revised those provisions on the lines of those sections of the North-Western Provinces Land-revenue Act, 1873, which relate to the Board of Revenue.

8. *Section 19 (section 13 of Bill as revised).*—As regards appeals, we have provided, at the suggestion of the Lahore Committee, that when an original order is modified or reversed on appeal by the Collector the order made by the Commissioner on further appeal to him shall be final.

We have excepted appeals under sections 58 and 118 of the Bill as revised from the operation of the general rule respecting the course of appeal.

9. *Section 23 (section 20 of Bill as revised).*—We have adapted the provisions of the Bill as introduced, respecting the service of processes through the post, to those of section 143 of the Bengal Tenancy Act, 1885.

We have also, on the analogy of section 30 of the Code of Civil Procedure, made special provision for cases in which the persons to be summoned are so numerous that personal service on all of them is not reasonably practicable.

10. *Section 26 (section 18 of Bill as revised).*—We have struck out the words which made appearances of legal practitioners dependent on the permission of Revenue-officers. There appears to us to be nothing in existing practice which cannot be adequately provided for by rules under section 17 of the Bill as revised.

11. *Chapter III.*—At the suggestion of the Lahore Committee, we have proposed to empower the Financial Commissioner to make rules to regulate the appointment, punishment, duties and emoluments of inámdárs, who in some districts of the Punjab hold a position similar to that of zaildárs.

The addition to section 35 (section 28 of the Bill as revised) renders unnecessary the retention of section 137 of the Bill as introduced.

We have added kánúngos to the classes to whom section 37 (section 30 of the Bill as revised) is to apply, and have proposed that any assignment of his emoluments by a person to

whom the section applies shall be subject to rules to be made by the Financial Commissioner in this behalf. A village-headman is, in special circumstances, allowed to perform his duties by deputy, and the deputy in such a case usually receives part of the emoluments of the headman.

12. *Chapter IV.*—In revising this Chapter it has been our object to continue, with as little alteration as possible, the provisions of the existing law. But we have so far altered those provisions as to give to all village-records the special evidential value which has hitherto been attached to a settlement-record only. The principal alterations will be found in sections 33 and 44 of the Bill as revised.

13. *Section 41 (section 32 of Bill as revised).*—In connection with this section and section 58 (section 49 of the Bill as revised) we have proposed to transfer Chapter VI of the Punjab Courts Act, 1884, to this Bill as Chapter XI.

14. *Section 44 (section 44 of Bill as revised).*—We have added after this section a section (section 45 of the Bill as revised) re-producing the substance of section 20 of the Punjab Land-revenue Act of 1871.

15. *Section 48 (section 45 of Bill as revised).*—We have made this section follow more closely the terms of section 66 of the North-Western Provinces Land-revenue Act, 1873, as amended by section 8 of the North-Western Provinces Land-revenue Act, 1879, providing, however, for the record not only of village-cesses which have been specially or generally approved by the Local Government but also, as suggested by the Chief Court, of those cesses the title to which has, before the passing of the proposed Act, been judicially established.

16. *Section 50 (Chapter IX of Bill as revised).*—We have substituted for this section a separate chapter on Partition and have incorporated in it most of the rules now in force in the Punjab and some of the provisions of the North-Western Provinces Land-revenue Act, 1873. We have also, at the suggestion of the Lahore Committee, proposed to insert a section (section 150 of the Bill as revised) designed for the protection from encroachment of land which has been reserved for the common purposes of co-sharers.

17. *Section 135.*—This section has become section 40 of the Bill as revised.

18. *Section 55.*—We have, at the suggestion of the Lahore Committee, expressly provided in section 147 of the Bill as revised for agreements substituting service for payment of land-revenue, and for the enforcement of those agreements. In some parts of the Punjab, and especially in districts lying along the frontier, a portion of the land-revenue is remitted on condition of the landowner rendering public service.

We have further in section 48 of the Bill as revised expressly declared all land to be liable to be assessed to land-revenue, following in this respect the provisions of sections 45 and 100 of the Bombay Land-revenue Code, 1879.

19. *Sections 56 and 57 (sections 61 and 62 of Bill as revised).*—We have transferred these sections to the Chapter relating to collection of land-revenue. But we have omitted sub-section (3) of section 57 empowering the Deputy Commissioner to prevent the removal of produce, such a power appearing to us to be rendered unnecessary by the other provisions of the Bill.

20. *Section 62 (section 53 of Bill as revised).*—We have incorporated in this section that portion of section 92 of the North-Western Provinces Land-revenue Act, 1873, which relates to the fixing of the period for which an assessment is to have effect.

21. After section 63 we have inserted a section (section 54 of the Bill as revised) in the terms of section 38 of the Punjab Land-revenue Act of 1871.

22. *Section 65 (section 56 of Bill as revised).*—We have provided in this section for fluctuating as well as fixed assessments, and required an assessment to be distributed before any instalment of it becomes payable.

23. *Section 67 (section 146 of Bill as revised).*—We consider that fluctuating dues payable by an inferior to a superior landowner should ordinarily be liable to commutation only on the application of both the landowners.

24. *Section 68 (section 60 of Bill as revised).*—We have proposed to restore the language of section 27 of the Punjab Land-revenue Act of 1871.

25. *Section 73.*—This section, which would have authorised the levy of interest on arrears of land-revenue, has met with much adverse criticism, and we have omitted it.

26. *Section 93.*—We have omitted this section as asserting without sufficient necessity a principle which would possibly operate harshly in case of communities jointly responsible for an assessment.

27. *Section 105 (section 96 of Bill as revised).*—We have made it clear that a sale discharges an arrear only to the extent of the proceeds of the sale, and that any balance of the arrear may be recovered from the defaulter either by further proceedings under Chapter VI of the Bill or by such other lawful means as the Collector thinks fit.

28. *Section 107 (section 98 of Bill as revised).*—We have removed clause (d), because sums due from an agent of the Collector would be recoverable as an arrear of land-revenue under Act XII of 1850.

As regards clause (e) (clause (c) in Bill as revised), we have proposed that only those fees be recoverable as arrears of land-revenue which are payable for the use of or benefits derived from works constructed by district boards or local boards for agricultural purposes.

At the suggestion of the Lahore Committee, we have added a clause applying the provisions of the section to sums payable to the Government by a person who is surety for the payment of any sum recoverable as an arrear of land-revenue.

29. *Section 108.*—For this section we have substituted section 33 of the revised Tenancy Bill.

30. *Chapter VIII.*—We have, at the suggestion of the Lahore Committee and with the concurrence of the Local Government, omitted the Chapter regarding village waste-lands.

31. *Chapter IX (Chapter VIII of Bill as revised).*—We have added to this Chapter a section (section 109) suggested by section 123 of the Bombay Land-revenue Code, 1879, imposing on village-officers the duty of reporting to a Revenue-officer the destruction, injury or removal of survey-marks erected in their villages.

32. We have inserted as Chapter X of the Bill as revised the rules which have long been in force in the Punjab respecting references to arbitration in matters relating to the revenue, and, as already stated, we have re-produced in Chapter XI the substance of Chapter VI of the Punjab Courts Act, 1884.

33. *Sections 123-125.*—We have transferred to the Tenancy Bill so much of these sections as relates to the deposit of rent.

34. *Sections 126 and 127 (section 141 of Bill as revised).*—At the suggestion of the Lahore Committee, we have required the rules of the Financial Commissioner to be made with the concurrence of the Chief Court.

35. *Section 129, sub-section (1) (section 155, sub-section (1), of Bill as revised).*—The statement of the matters respecting which rules may be made under this sub-section in such detail as they are stated in clauses (f) and (g) appears to us to be undesirable as being likely to lead to a narrower construction than is intended being placed on the last clause of the sub-section.

We have proposed by clause (c) of the sub-section to confer on the Financial Commissioner the power to make rules respecting the service and execution of processes issued by Revenue Courts which is at present vested in the Chief Court under section 20 of the Court-fees Act, 1870.

36. *Section 131.*—The substance of this section has, with reference to section 6 of the General Clauses Act, 1887, been incorporated in section 156 of the Bill as revised.

37. *Section 133.*—It appears to us that this section will find a more appropriate place in some law of general application than in this Bill.

38. *Section 136 (section 149 of Bill as revised).*—We have proposed to give power to compel the attendance of a person within the limits of an estate in which he holds or cultivates land, even though he does not reside there.

39. *Section 138.*—This section has, in a slightly modified form, become section 34 of the revised Tenancy Bill.

40. We have added to the Bill as revised the following among other sections, namely:—

- (a) *section 99*, respecting the application of Chapter VI to the collection of sums recoverable as arrears of land-revenue;
- (b) *section 142*, respecting the attachment of assigned land-revenue;
- (c) *section 143 (section 127, sub-section (2), of Bill as introduced)*, respecting the preservation of attached produce;
- (d) *section 148*, respecting the recovery of the cost of assessing assigned land-revenue;
- (e) *section 152*, respecting the award of costs by Revenue-officers; and
- (f) *section 153 (section 20, sub-section (2), of Bill as introduced)*, respecting the computation of periods for appeals and applications for review of judgment.

41. The publication ordered by the Council has been made as follows:—

In English.

| <i>Gazette.</i> | <i>Date.</i> |
|----------------------------------|---|
| Gazette of India | 17th, 24th and 31st July, 1886. |
| Punjab Government Gazette | 22nd and 29th July, and 5th August, 1886. |

In the Vernacular.

| <i>Province.</i> | <i>Language.</i> | <i>Date.</i> |
|------------------|------------------|-----------------------------------|
| Punjab | Urdu | 12th, 19th and 26th August, 1886. |

42. We think that the measure has been so altered as to require re-publication, and we recommend that it be re-published, with this Report, for general information, in the Gazette of India in English and in the Punjab Government Gazette in English and Urdu.

E. G. WACE.

A. COLVIN.

ANDREW R. SCOBLE.

J. B. PEILE.

J. W. QUINTON.

The 27th July, 1887.

No. II.

THE PUNJAB LAND-REVENUE
BILL.

CONTENTS.

CHAPTER I.

PRELIMINARY.

Sections.

1. Title, extent and commencement.
2. Repeal.
3. Definitions.
4. Exclusion of certain land from operation of Act.
5. Power to vary limits and alter number of tahsils, districts and divisions.

CHAPTER II.

REVENUE-OFFICERS.

Classes and Powers.

6. Classes of Revenue-officers.
7. Financial Commissioner.
8. Appointment of Commissioners, and of Deputy, Assistant and Extra Assistant Commissioners.
9. Appointment of Tahsildars and Naib-tahsildars.
10. Powers of Revenue-officers.

Administrative Control.

11. Superintendence and control of Revenue-officers.
12. Power to distribute business and withdraw and transfer cases.

Appeal, Review and Revision.

13. Appeals.
14. Limitation for appeals.
15. Review by Revenue-officers.
16. Power to call for, examine and revise proceedings of Revenue-officers.

Procedure.

17. Power to make rules as to procedure.
18. Persons by whom appearances and applications may be made before and to Revenue-officers.
19. Power of Revenue-officer to summon persons.
20. Mode of service of summons.
21. Mode of service of notice, order or proclamation or copy thereof.
22. Mode of making proclamation.

Supplemental Provisions.

23. Place of sitting.
24. Holidays.
25. Discharge of duties of Collector dying or being disabled.
26. Retention of powers by Revenue-officers on transfer.
27. Conferment of powers of Revenue-officer.

CHAPTER III.

KÁNÚNGOS, ZAILDÁRS, INÁNDÁRS AND VILLAGE-OFFICERS.

28. Rules respecting kánúngos, zaildars, inamdars and village-officers.

Sections.

29. Village-officers' cess.
30. Restriction on attachment or assignment of remuneration of kánúngos, zaildars, inamdars and village-officers.

CHAPTER IV.

RECORDS.

Records-of-rights and Annual Records.

31. Record-of-rights and documents included therein.
32. Making or special revision of record-of-rights.
33. Annual record.

Procedure for making Records.

34. Making of that part of the annual record which relates to landowners, assignees of revenue and occupancy-tenants.
35. Making of that part of the annual record which relates to other persons.
36. Determination of disputes.
37. Restrictions on variation of entries in records.
38. Mutation-fee.
39. Penalty for neglect to report acquisition of any right referred to in section 34.
40. Obligation to furnish information necessary for the preparation of records.

Rights of the Government and presumptions with respect thereto and to other matters.

41. Rights of the Government in mines and minerals.
42. Presumption as to ownership of forests, quarries and waste-lands.
43. Compensation for infringement of rights of third parties in exercise of a right of the Government.
44. Presumption in favour of entries in records-of-rights and annual records.
45. Suit for declaratory decree by person aggrieved by an entry in a record.

Supplemental Provisions.

46. Power to make rules respecting records and other matters connected therewith.
47. Records-of-rights and annual records for groups of estates.

CHAPTER V.

ASSESSMENT.

48. Assessment of land-revenue.

General Assessments.

49. Notification of intended re-assessment and instructions as to principles of assessment.
50. Mode of determining assessment.
51. Announcement of assessment.
52. Application for re-consideration of assessment.
53. Confirmation and duration of assessment.
54. Assessment to remain in force till new assessment takes effect.
55. Refusal to be liable for assessment, and consequences thereof.
56. Distribution of the assessment of an estate over the holdings comprised therein.
57. Application for amendment of the distribution of an assessment.

Sections.

58. Appeals from orders under sections 52 and 57.

Special Assessments.

59. Special assessments.
60. Formation of waste-land into separate estates.

CHAPTER VI.

COLLECTION OF LAND-REVENUE.

61. Security for payment of land-revenue.
62. Further security for payment of land-revenue.
63. Orders to regulate payment of land-revenue.
64. Rules to regulate collection, remission and suspension of land-revenue.
65. Costs recoverable as part of arrear.
66. Certified account to be evidence as to arrear.
67. Processes for recovery of arrears.
68. Writ of demand.
69. Arrest and detention of defaulter.
70. Distress and sale of moveable property and crops.
71. Transfer of holding.
72. Attachment of estate or holding.
73. Annulment of assessment of estate or holding.
74. Proclamation of attachment or annulment of assessment, and consequences of the proclamation.
75. Sale of estate or holding.
76. Effect of sale on incumbrances.
77. Proceedings against other immoveable property of defaulter.
78. Remedies open to person denying his liability for an arrear.

Procedure in Sales.

79. Proclamation of sale.
80. Indemnity to Revenue-officer with respect to contents of proclamation.
81. Publication of proclamation.
82. Time and conduct of sale.
83. Power to postpone sale.
84. Stay of sale.
85. Payment of deposit by highest bidder.
86. Consequences of failure to pay deposit.
87. Exercise of right of pre-emption.
88. Time for payment in full.
89. Procedure in default of payment.
90. Report of sale to Commissioner.
91. Application to set aside sale.
92. Order confirming or setting aside sale.
93. Refund of purchase-money on setting aside of sale.
94. Proclamation after postponement or on re-sale.
95. On confirmation of sale, possession and certificate to be granted to purchaser.
96. Proceeds of sale.

CHAPTER VII.

RECOVERY OF OTHER DEMANDS BY REVENUE-OFFICERS.

97. Recovery of certain arrears through Revenue-officer instead of by suit.
98. Other sums recoverable as arrears of land-revenue.
99. Application of Chapter VI to sums recoverable under this Chapter.

Sections.

CHAPTER VIII.

SURVEYS AND BOUNDARIES.

100. Power of Financial Commissioner to make rules for demarcation of boundaries and erection of survey-marks.
101. Power of Revenue-officers to define boundaries.
102. Cost of erection and repair of survey-marks.
103. Recovery of cost incurred by the Government.
104. Power of Revenue-officers to enter on land for purposes of survey and demarcation.
105. Surveys for purpose of preparation of records.
106. Provision of flagholders and chainmen for those surveys.
107. Professional surveys.
108. Penalty for destruction, injury or removal of survey-marks.
109. Report of destruction, injury or removal of survey-marks.

CHAPTER IX.

PARTITION.

110. Effect of partitions of estates and tenancies on joint liability for revenue and rent.
111. Application for partition.
112. Restrictions and limitations on partition.
113. Notice of application for partition.
114. Addition of parties to application.
115. Absolute disallowance of partition.
116. Procedure on admission of application.
117. Disposal of questions as to title in property to be divided.
118. Disposal of other questions.
119. Administration of property excluded from partition.
120. Distribution of revenue and rent after partition.
121. Instrument of partition.
122. Delivery of possession of property allotted on partition.
123. Affirmation of partitions privately effected.
124. Power to make rules as to costs of partitions.
125. Re-distribution of land according to custom.
126. Officers who may be empowered to act under this Chapter.

CHAPTER X.

ARBITRATION.

127. Power to refer to arbitration.
128. Order of reference and contents thereof.
129. Nomination of arbitrators.
130. Substitution of arbitrators by parties.
131. Nomination and substitution of arbitrators by Revenue-officers.
132. Process for appearance before arbitrators.
133. Award of arbitrators and presentation thereof.
134. Procedure on presentation of award.
135. Effect of award.

The Punjab Land-revenue Bill.
(Chapter I.—Preliminary.—Sections 1-3.)

CHAPTER XI.

SPECIAL JURISDICTION WITH RESPECT TO LAND.

Sections.

136. Power to invest officers making records-of-rights or general re-assessments with powers of Civil Courts.
137. Control over such officers and appeals from and revision of their decrees and orders.

CHAPTER XII.

SUPPLEMENTAL PROVISIONS.

Revenue Deposits.

138. Power to deposit certain sums other than rent.
139. Procedure in case of deposit on account of a payment due to the Government.
140. Procedure in case of other deposits.

Execution of Orders of Civil and Criminal Courts by Revenue-officers.

141. Orders of Civil and Criminal Courts for execution of processes against land or the produce thereof to be addressed to a Revenue-officer.
142. Attachment of assigned land-revenue.

Preservation of attached Produce.

143. Preservation of attached produce.

Division of Produce.

144. Division of produce.

Miscellaneous.

145. Village-cesses.
146. Superior landowners' dues.
147. Substitution of service for payment of land-revenue.
148. Recovery of cost of assessing assigned land-revenue.
149. Penalty for failure to attend within limits of estate in obedience to order of Revenue-officer.
150. Prevention of encroachment on common lands.
151. Papers kept by village-officers to be deemed public documents.
152. Costs.
153. Computation of periods limited for appeals and applications for review.
154. Restriction on Revenue-officers bidding at auctions or trading.
155. Power to make rules.
156. Rules to be made after previous publication.
157. Powers exercisable by the Financial Commissioner from time to time.

Exclusion of jurisdiction of Civil Courts.

158. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue-officers.

THE SCHEDULE.—ENACTMENTS REPEALED.

A Bill to amend and declare the Land-revenue Law of the Punjab.

WHEREAS it is expedient to amend and declare the law in force in the Punjab with respect to the making and maintenance of records-of-rights in land, the assessment and collection of land-revenue,

and other matters relating to land and the liabilities incident thereto; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title, extent and commencement.

1. (1) This Act may be called the Punjab Land-revenue Act, 1887.

(2) It extends to the territories for the time being administered by the Lieutenant-Governor of the Punjab, including the pargana of Spiti, but not so as to affect, otherwise than as expressly provided by this Act, any Regulation in force under the provisions of the Statute 33 Victoria, chapter 3, section 1, in any portion of those territories; and

(3) It shall come into force on such date as the Local Government, with the previous sanction of the Governor-General in Council, may by notification appoint in this behalf.

(4) Any power conferred by this Act on the Financial Commissioner to make rules, and on the Local Government to sanction them, may be exercised at any time after the passing of this Act, but a rule so made shall not take effect till the commencement of this Act.

2. (1) The enactments mentioned in the schedule are repealed to the extent specified in the third column thereof.

(2) But all rules, appointments, assessments and transfers made, notifications and proclamations issued, authorities and powers conferred, farms and leases granted, records-of-rights and other records framed, revised or confirmed, rights acquired, liabilities incurred, times and places appointed and other things done under any of the repealed enactments shall, so far as may be, be deemed to have been respectively made, issued, conferred, granted, framed, revised, confirmed, acquired, incurred, appointed and done under this Act.

(3) Any enactment or document referring to any enactment hereby repealed shall be construed as referring to this Act.

3. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

- (1) "estate" means any area—
(a) for which a separate record-of-rights has been made; or
(b) which has been separately assessed to land-revenue, or would have been so assessed if the land-revenue had not been released, compounded for or redeemed; or
(c) which the Local Government may, by general rule or special order, declare to be an estate:

(2) "holding" means a share or portion of an estate held by one landowner or jointly by two or more landowners:

(3) "pay", with its grammatical variations and cognate expressions, includes, when used with reference to rent, "deliver" and "render", with their grammatical variations and cognate expressions:

*The Punjab Land-revenue Bill.**(Chapter I.—Preliminary.—Sections 4-5. Chapter II.—Revenue-officers.—Section 6.)*

(4) "tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that other person, but it does not include—

- (a) an inferior landowner, or
- (b) a mortgagee of the rights of a landowner, or
- (c) a person to whom a holding has been transferred, or an estate or holding has been let in farm, under this Act for the recovery of an arrear of land-revenue or of a sum recoverable as such an arrear, or
- (d) a person who takes from the Government a lease of unoccupied land for the purpose of sub-letting it:
- (5) "landlord" means a person under whom a tenant holds land, and to whom the tenant is, or but for a special contract would be, liable to pay rent for that land:

(6) "rent" means whatever is payable in money, kind or service by a tenant on account of the use or occupation of land held by him:

(7) "tenancy" means a parcel of land held by a tenant under one lease or one set of conditions:

(8) "landowner" does not include a tenant or an assignee of land-revenue, but does include a person to whom a holding has been transferred, or an estate or holding has been let in farm, under this Act for the recovery of an arrear of land-revenue or of a sum recoverable as such an arrear, and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof, or in the enjoyment of any part of the profits of an estate:

(9) "land-revenue" includes assigned land-revenue and sums payable in respect of land, by way of quit-rent or of commutation for service, to the Government or to a person to whom the Government has assigned the right to receive the payment:

(10) "arrear of land-revenue" means land-revenue which remains unpaid after the date on which it becomes payable:

(11) "rates and cesses" means rates and cesses which are primarily payable by landowners, and includes—

- (a) the local rate, if any, payable under the Punjab Local Rates Act, 1878;
- (b) the local rate, if any, payable under the Punjab District Boards Act, 1883, and any fee leviable under section 33 of that Act from landowners for the use of or benefits derived from such works as are referred to in section 20, clauses (i) and (j), of that Act;
- (c) any annual rate chargeable on owners of lands under section 59 of the Northern India Canal and Drainage Act, 1873;
- (d) the zaildār and village-officers' cesses; and
- (e) sums payable on account of village-expenses:

(12) "defaulter" means a person liable for an arrear of land-revenue, and includes a person who is responsible as surety for the payment of the arrear:

(13) "village-officer" means a chief-headman, headman or patwārī:

(14) "village-cess" includes any cess, contribution or due which is customarily leviable within

an estate and is neither a payment for the use of private property or for personal service nor imposed by or under any enactment for the time being in force:

(15) "Revenue-officer", in any provision of this Act, means a Revenue-officer having authority under this Act to discharge the functions of a Revenue-officer under that provision:

(16) "agricultural year" means the year commencing on the sixteenth day of June, or on such other date as the Local Government may by notification appoint for any local area:

(17) "incumbrance" means a charge upon or claim against land arising out of a private grant or contract:

(18) "legal practitioner" means any legal practitioner within the meaning of the Legal Practitioners Act, 1879, except a mukhtār:

(19) "survey-mark" includes boundary-mark: and

(20) "notification" means a notification published by authority of the Local Government in the official Gazette.

4. (1) Except so far as may be necessary for the Exclusion of certain record, recovery and administration of village-cesses, land from operation of nothing in this Act applies to land which is occupied as the site of a town or village and is not assessed to land-revenue.

(2) A Revenue-officer may define for the purposes of this Act the limits of any such land.

5. The Local Government may vary the limits of the tahsils, districts and divisions into which the territories administered by it are divided, and may alter the number of those tahsils and, with the previous sanction of the Governor-General in Council, the number of those districts and divisions.

CHAPTER II.

REVENUE-OFFICERS.

Classes and Powers.

6. (1) There shall be the following classes of Revenue-officers, namely:—

- (a) the Financial Commissioner;
- (b) the Commissioner;
- (c) the Deputy Commissioner, hereinafter referred to as the Collector;
- (d) the Assistant Collector of the first grade; and
- (e) the Assistant Collector of the second grade.

(2) The Local Government may appoint any Assistant Commissioner, Extra Assistant Commissioner or Tahsildār to be an Assistant Collector of the first or of the second grade, as it thinks fit, and any Naib-tahsildār to be an Assistant Collector of the second grade.

(3) Appointments under sub-section (2) shall be by notification, and may be of a person specially by name or by virtue of his office or of more persons than one by any description sufficient for their identification.

XVIII of 1879.

of 1878.

X of 1883.

III of 1873.

The Punjab Land-revenue Bill.
(Chapter II.—Revenue-officers.—Sections 7-14.)

(4) Subject to the provisions of this Act the jurisdiction of the Financial Commissioner extends to the whole of the territories for the time being administered by the Lieutenant-Governor of the Punjab, and of Commissioners and of Collectors and Assistant Collectors to the divisions and districts respectively in which they are for the time being employed.

7. (1) There shall be one or more Financial Commissioners, who shall be appointed, and may be removed, by the Local Government with the previous sanction of the Governor-General in Council.

(2) Where more Financial Commissioners than one have been appointed, the Local Government may make rules as to the distribution among them of business under this or any other Act, and by those rules require any case or class or classes of cases to be considered and disposed of by the Financial Commissioners collectively.

(3) When there is a difference of opinion among the Financial Commissioners as to any decree or order to be made in a case which they are required by rules under the last foregoing sub-section to consider and dispose of collectively, the following rules shall apply, namely:—

(a) where the case is an appeal or a case on review or revision, it shall be decided in accordance with the opinion of the majority of the Financial Commissioners, or, if there is no such majority which concurs in a decision modifying or reversing the decree or order under appeal, review or revision, that decree or order shall be affirmed: and

(b) where the case is not an appeal or a case on review or revision, the matter respecting which there is the difference of opinion shall be referred to the Local Government for decision, and the decision of that Government with respect thereto shall be final.

(4) The expression "Financial Commissioner" in this or any other Act shall, when there are more Financial Commissioners than one, be construed as meaning one or more of the Financial Commissioners as the rules for the time being in force under sub-section (2) may require.

(5) The second Financial Commissioner appointed under section 52 of the Punjab Courts Act, 1884, shall be deemed to have had jurisdiction on and after the first day of November, 1884, to make any decree or order or dispose of any other business which might have been made or disposed of by the other Financial Commissioner.

8. Commissioners, Deputy Commissioners, Assistant Commissioners and Extra Assistant Commissioners shall be appointed and may be removed by the Local Government.

9. The Local Government shall fix the number of Tahsildars and Naib-tahsildars to be appointed, and the Financial Commissioner may make rules for their appointment and removal.

10. Except where the class of the Revenue-officer by whom any function is to be discharged is specified in this Act, the Local Government may by notification determine the functions to be discharged under this Act by any class of Revenue-officers.

Administrative Control.

11. (1) The Financial Commissioner shall be subject to the control of the Local Government.

(2) The general superintendence and control over all other Revenue-officers shall be vested in, and all such officers shall be subordinate to, the Financial Commissioner.

(3) Subject to the general superintendence and control of the Financial Commissioner, a Commissioner shall control all other Revenue-officers in his division.

(4) Subject as aforesaid and to the control of the Commissioner, a Collector shall control all other Revenue-officers in his district.

12. (1) The Financial Commissioner or a Commissioner or Collector may by written order distribute, in such manner as he thinks fit, any business cognizable by any Revenue-officer under his control.

(2) The Financial Commissioner or a Commissioner or Collector may withdraw any case pending before any Revenue-officer under his control, and either dispose of it himself, or by written order refer it for disposal to any other Revenue-officer under his control.

(3) An order under sub-section (1) or sub-section (2) shall not empower any officer to exercise any powers or deal with any business which he would not be competent to exercise or deal with within the local limits of his own jurisdiction.

Appeal, Review and Revision.

13. Save as otherwise provided by this Act, an appeal shall lie from an original or appellate order of a Revenue-officer as follows, namely:—

(a) to the Collector when the order is made by an Assistant Collector of either grade;

(b) to the Commissioner when the order is made by a Collector;

(c) to the Financial Commissioner when the order is made by a Commissioner:

Provided that—

(i) when an original order is confirmed on first appeal, a further appeal shall not lie;

(ii) when any such order is modified or reversed on appeal by the Collector, the order made by the Commissioner on further appeal, if any, to him shall be final.

14. Save as otherwise provided by this Act, the period of limitation for an appeal under the last foregoing section shall run from the date of the order appealed against, and shall be as follows, that is to say:—

(a) when the appeal lies to the Collector—thirty days;

The Punjab Land-revenue Bill.
(Chapter II.—Revenue-officers.—Sections 15-20.)

(b) when the appeal lies to the Commissioner—sixty days ;

(c) when the appeal lies to the Financial Commissioner—ninety days.

15. (1) A Revenue-officer may, either of his own motion or on the application of any party interested, review, and on so reviewing modify, reverse or confirm, any order passed by himself or by any of his predecessors in office:

Provided as follows:—

(a) when a Commissioner or Collector thinks it necessary to review any order which he has not himself passed, and when a Revenue-officer of a class below that of Collector proposes to review any order, whether passed by himself or by any of his predecessors in office, he shall first obtain the sanction of the Revenue-officer to whose control he is immediately subject ;

(b) an application for review of an order shall not be entertained unless it is made within ninety days from the passing of the order, or unless the applicant satisfies the Revenue-officer that he had sufficient cause for not making the application within that period ;

(c) an order shall not be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order ;

(d) an order against which an appeal has been preferred shall not be reviewed.

(2) For the purposes of this section, the Collector shall be deemed to be the successor in office of any Revenue-officer of a lower class who has left the district or has ceased to exercise powers as a Revenue-officer, and to whom there is no successor in office.

(3) An appeal shall not lie from an order refusing to review or confirming on review a previous order.

16. (1) The Financial Commissioner may at any time call for the record of any case pending before, or disposed of by, any Revenue-officer subordinate to him.

(2) A Commissioner or Collector may call for the record of any case pending before, or disposed of by, any Revenue-officer under his control.

(3) If in any case in which a Commissioner or Collector has called for a record he is of opinion that the proceedings taken or order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Financial Commissioner.

(4) The Financial Commissioner may in any case called for by himself under sub-section (1) or reported to him under sub-section (3) pass such order as he thinks fit:

Provided that he shall not under this section pass an order affecting any question of right between private persons without giving those persons an opportunity of being heard.

Procedure.

17. (1) The Local Government may make rules consistent with this Act for regulating the procedure of

Revenue-officers under this Act in cases in which a procedure is not prescribed by this Act.

(2) The rules may provide, among other matters, for the mode of enforcing orders of ejectment from, and delivery of possession of, immoveable property, and rules providing for those matters may confer on a Revenue-officer all or any of the powers in regard to contempts, resistance and the like which a Civil Court may exercise in the execution of a decree whereby it has adjudged ejectment from, or delivery of possession of, such property.

(3) Subject to the rules under this section, a Revenue-officer may refer any case which he is empowered to dispose of under this Act to another Revenue-officer for investigation and report, and may decide the case upon the report.

18. (1) Appearances before a Revenue-officer, and Persons by whom appearances and applications may be made before and to Revenue-officers. applications to and acts to be done before him, under this Act may be made or done—

(a) by the parties themselves, or

(b) by their recognized agents or a legal practitioner :

Provided that the employment of a recognized agent or legal practitioner shall not excuse the personal attendance of a party to any proceeding in any case in which personal attendance is specially required by an order of the officer.

(2) For the purposes of sub-section (1), recognized agents shall be such persons as the Local Government may by notification declare in this behalf.

(3) The fees of a legal practitioner shall not be allowed as costs in any proceeding before a Revenue-officer under this Act unless that officer considers, for reasons to be recorded by him in writing, that the fees should be allowed.

19. (1) A Revenue-officer may summon any person whose attendance he considers necessary for the purpose of any business before him as a Revenue-officer.

(2) A person so summoned shall be bound to appear at the time and place mentioned in the summons in person or, if the summons so allows, by his recognized agent or a legal practitioner.

(3) The person attending in obedience to the summons shall state the truth upon any matter respecting which he is examined or makes statements, and produce such documents and other things relating to any such matter as the Revenue-officer may require.

20. (1) A summons issued by a Revenue-officer shall, if practicable, be served (a) personally on the person to whom it is addressed, or failing him on (b) his recognized agent or (c) an adult male member of his family usually residing with him.

(2) If service cannot be so made, or if acceptance of service so made is refused, the summons may be served by posting a copy thereof at the usual or last known place of residence of the person to whom it is addressed, or, if that person does not reside in the district in which the Revenue-officer is employed and the case to which the summons relates has reference to land in that district, then by posting a copy of the summons

The Punjab Land-revenue Bill.

(Chapter II.—Revenue-officers.—Sections 21-27. Chapter III.—Kánúngos, Zaildárs, Inámdárs and Village-officers.—Sections 28-29.)

on some conspicuous place in or near the estate wherein the land is situate.

(3) If the summons relates to a case in which persons having the same interest are so numerous that personal service on all of them is not reasonably practicable, it may, if the Revenue-officer so directs, be served by delivery of a copy thereof to such of those persons as the Revenue-officer nominates in this behalf and by proclamation of the contents thereof for the information of the other persons interested.

(4) A summons may, if the Revenue-officer so directs, be served on the person named therein, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the person and registered under Part III of the Indian Post Office Act, 1866.

XIV of 1866.

(5) When a summons is so forwarded in a letter and it is proved that the letter was properly addressed and duly posted and registered, the Revenue-officer may presume that the summons was served at the time when the letter would be delivered in the ordinary course of post.

21. A notice, order or proclamation, or copy of any such document, issued by a Revenue-officer for service on any person shall be served in the manner provided in the last foregoing section for the service of a summons.

22. When a proclamation relating to any land is issued by a Revenue-officer, it shall, in addition to any other mode of publication which may be prescribed in any provision of this Act, be made by beat of drum or other customary method, and by the posting of a copy thereof on a conspicuous place in or near the land to which it relates.

Supplemental Provisions.

23. (1) An Assistant Collector may exercise his powers under this Act at any place within the limits of the district in which he is employed.

(2) Any other Revenue-officer may only exercise his powers under this Act within the local limits of his jurisdiction.

24. (1) The Financial Commissioner, with the approval of the Local Government, shall publish in the local official Gazette before the commencement of each calendar year a list of days to be observed in that year as holidays by all or any Revenue-officers.

(2) A proceeding had before a Revenue-officer on a day specified in the list as a day to be observed by him as a holiday shall not be invalid by reason only of its having been had on that day.

25. When a Collector dies or is disabled from performing his duties, the officer who succeeds temporarily to the chief executive administration of the district under any orders which may be generally or specially issued by the Local Government in this behalf shall be deemed to be a Collector under this Act.

26. When a Revenue-officer of any class who has been invested under the foregoing provisions of this Act with any powers to be exercised in any local area

is transferred from that local area to another as a Revenue-officer of the same or a higher class, he shall continue to exercise those powers in that other local area unless the Local Government otherwise directs or has otherwise directed.

27. (1) The Local Government may confer on any person—

(a) all or any of the powers of a Financial Commissioner, Commissioner or Collector under this Act, or

(b) all or any of the powers with which an Assistant Collector may be invested thereunder,

and may withdraw any powers so conferred.

(2) Any person on whom powers are conferred under this section shall exercise those powers within such local limits and in such classes of cases as the Local Government may direct, and, except as otherwise directed by the Local Government, shall for all purposes connected with the exercise thereof be deemed to be a Financial Commissioner, Commissioner, Collector or Assistant Collector, as the case may be.

(3) If any of the powers of a Collector under this Act are conferred on an Assistant Collector, they shall, unless the Local Government by special order otherwise directs, be exercised by him subject to the control of the Collector.

CHAPTER III.

KÁNÚNGOS, ZAILDÁRS, INÁMDÁRS AND VILLAGE-OFFICERS.

28. (1) The Financial Commissioner may make rules respecting Kánúngos, zaildárs, inámdárs and village-officers. Rules to regulate the appointment, duties, emoluments, punishment, suspension and removal of Kánúngos, zaildárs, inámdárs and village-officers.

(2) Rules under sub-section (1) may direct that the emoluments of a zaildár, inámdár or village-officer shall be such a percentage payable out of the land-revenue as may be prescribed by the rules, and that, where the land-revenue has been released, compounded for or redeemed, the percentage shall be a charge payable by the person who would be liable for the land-revenue if it had not been released, compounded for or redeemed.

29. (1) The Local Government may by notification impose on any estate, or on all or any estates in any local area, a cess, to be called the village-officers' cess, at a rate not exceeding one anna for every rupee of the annual value, for remunerating village-officers and for defraying other expenditure directly connected with the supervision of those officers or with the performance of their duties.

(2) "Annual value" in the last foregoing subsection has the meaning assigned to that expression in the Punjab District Boards Act, 1883.

(3) The Financial Commissioner may make rules for the collection, control and expenditure of the village-officers' cess.

(4) All cesses now levied in any local area for the purposes mentioned in sub-section (1) shall be deemed to have been lawfully imposed and shall,

XX of 1

*The Punjab Land-revenue Bill.**(Chapter III.—Kánungos, Zaildars, Inámdárs and Village-officers.—Section 30.**Chapter IV.—Records.—Sections 31-36.)*

until the village-officers' cess is imposed in that local area under that sub-section, be deemed to be lawfully leviable and, for the purposes of this section, to be that cess.

30. (1) The emoluments of a kánungo, zaildár, inámdár or village-officer shall not be liable to attachment in execution of a decree or order of any Civil or Revenue Court.

Restriction on attachment or assignment of remuneration of kánungos, zaildars, inámdárs and village-officers.

(2) An assignment of, or charge on, or an engagement to assign or charge, any such emoluments shall be void unless it is authorised by rules made by the Financial Commissioner in this behalf.

CHAPTER IV.

RECORDS.

Records-of-rights and Annual Records.

31. (1) Save as otherwise provided by this Chapter, there shall be a record-of-rights for each estate.

Record-of-rights and documents included therein.

(2) The record-of-rights for an estate shall include the following documents, namely :

- (a) statements showing, so far as may be practicable,—
 - (i) the persons who are landowners, tenants or assignees of land-revenue in the estate, or who are entitled to receive any of the rents, profits or produce of the estate ;
 - (ii) the nature and extent of the interests of those persons, and the conditions and liabilities attaching thereto ; and
 - (iii) the rent, land-revenue, rates, cesses or other payments due from and to each of those persons and to the Government ;
- (b) a statement of customs respecting rights and liabilities in the estate ;
- (c) a map of the estate ; and
- (d) such other documents as the Financial Commissioner may, with the previous sanction of the Local Government, prescribe.

32. (1) When it appears to the Local Government that a record-of-rights for an estate does not exist, or that the existing record-of-rights for an estate requires special revision, the Local Government may by notification direct that a record-of-rights be made or that the record-of-rights be specially revised, as the case may be.

Making or special revision of record-of-rights.

(2) The notification may direct that records-of-rights shall be made or specially revised for all or any estates in any local area.

(3) A record-of-rights made or specially revised for an estate under this section shall be deemed to be the record-of-rights for the estate, but shall not affect any presumption in favour of the Government which has already arisen from any previous record-of-rights.

33. (1) The Collector shall cause to be prepared by the patwári of each estate yearly, or at such

Annual record.

other intervals as the Financial Commissioner may prescribe, an edition of the record-of-rights amended in accordance with the provisions of this Chapter.

(2) This edition of the record-of-rights shall be called the annual record for the estate, and shall comprise the statements mentioned in sub-section (2), clause (a), of section 31 and such other documents, if any, as the Financial Commissioner may, with the previous sanction of the Local Government, prescribe.

(3) For the purposes of the preparation of the annual record, the Collector shall cause to be kept up by the patwári of each estate a register of mutations and such other registers as the Financial Commissioner may prescribe.

Procedure for making Records.

34. (1) Any person acquiring, by inheritance, purchase, mortgage, gift or otherwise, any right in an estate as a landowner, assignee of land-revenue or tenant having a right of occupancy, shall report his acquisition of the right to the patwári of the estate.

Making of that part of the annual record which relates to land-owners, assignees of revenue and occupancy-tenants.

(2) If the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the patwári.

(3) The patwári shall enter in his register of mutations every report made to him under sub-section (1) or sub-section (2), and shall also make an entry therein respecting the acquisition of any such right as aforesaid which he has reason to believe to have taken place and of which a report should have been made to him under one or other of those sub-sections and has not been so made.

(4) A Revenue-officer shall from time to time inquire into the correctness of all entries in the register of mutations and into all such acquisitions as aforesaid coming to his knowledge of which, under the foregoing sub-sections, report should have been made to the patwári and entry made in that register, and shall in each case make such order as he thinks fit with respect to the entry in the annual record of the right acquired.

(5) Such an entry shall be made by the insertion in that record of a description of the right acquired and by the omission from that record of any entry in any record previously prepared which by reason of the acquisition has ceased to be correct.

35. The acquisition of any interest in land other than a right referred to in sub-section (1) of the last foregoing section shall,—

Making of that part of the annual record which relates to other persons.

(a) if it is undisputed, be recorded by the patwári in such manner as the Financial Commissioner may by rules in this behalf prescribe ; and,

(b) if it is disputed, be entered by the patwári in the register of mutations and dealt with in the manner prescribed in sub-sections (4) and (5) of the last foregoing section.

36. (1) If during the making, revision or preparation of any record or in the course of any

Determination of disputes.

The Punjab Land-revenue Bill.
(Chapter IV.—Records.—Sections 37-46.)

inquiry under this Chapter a dispute arises as to any matter of which an entry is to be made in a record or in a register of mutations, a Revenue-officer may of his own motion, or on the application of any party interested, but subject to the provisions of the next following section, and after such inquiry as he thinks fit, determine the entry to be made as to that matter.

(2) If in any such dispute the Revenue-officer is unable to satisfy himself as to which of the parties thereto is in possession of any property to which the dispute relates, he shall ascertain by summary inquiry who is the person best entitled to the property, and shall by order direct that that person be put in possession thereof, and that an entry in accordance with that order be made in the record or register.

(3) A direction of a Revenue-officer under sub-section (2) shall be subject to any decree or order which may be subsequently passed by any Court of competent jurisdiction.

37. Entries in records-of-rights or in annual records, except entries made in annual records by patwāris under clause (a) of section 35 with respect to undisputed acquisitions of interests referred to in that section, shall not be varied in subsequent records otherwise than by—

- (a) making entries in accordance with facts proved or admitted to have occurred;
- (b) making such entries as are agreed to by all the parties interested therein or are supported by a decree or order binding on those parties;
- (c) making new maps where it is necessary to make them.

38. (1) The Local Government may fix a scale of fees for all or any classes of entries in any record or register under this Chapter and for copies of any such entries.

(2) A fee in respect of an entry shall be payable by the person in whose favour the entry is made.

39. Any person neglecting to make the report required by section 34 within three months from the date of his acquisition of a right referred to in that section shall be liable, at the discretion of the Collector, to a fine not exceeding five times the amount of the fee which would have been payable according to the scale fixed under the last foregoing section if the acquisition of the right had been reported immediately after its accrual.

40. Any person whose rights, interests or liabilities are required to be entered in any record under this Chapter shall be bound to furnish, on the requisition of any Revenue-officer or village-officer engaged in compiling the record, all information necessary for the correct compilation thereof.

Rights of the Government and presumptions with respect thereto and to other matters.

41. All mines of metal and coal, and all earth-oil and gold-washings, shall be deemed to be the property of the Government, and the

Government shall have all powers necessary for the proper enjoyment of its right thereto.

42. (1) When in any record-of-rights completed before the eighteenth day of November, 1871, it is not expressly provided that any forest, quarry, unclaimed, unoccupied, deserted or waste land, spontaneous produce or other accessory interest in land belongs to the landowners, it shall be presumed to belong to the Government.

(2) When in any record-of-rights completed after that date it is not expressly provided that any forest or quarry or any such land or interest belongs to the Government, it shall be presumed to belong to the landowners.

(3) The presumption created by sub-section (1) may be rebutted by showing—

- (a) from the record or report made by the assessing officer at the time of assessment, or
- (b) if the record or report is silent, then from a comparison between the assessment of villages in which there existed, and the assessment of villages of similar character in which there did not exist, any forest or quarry, or any such land or interest,

that the forest, quarry, land or interest was taken into account in the assessment of the land-revenue.

(4) Until the presumption is so rebutted, the forest, quarry, land or interest shall be held to belong to the Government.

43. (1) Whenever, in the exercise of any right of the Government referred to in either of the two last foregoing sections, the rights of any person are infringed by the occupation or disturbance of the surface of any land, the Government shall pay, or cause to be paid, to that person compensation for the infringement.

(2) The compensation shall be determined as nearly as may be in accordance with the provisions of the Land Acquisition Act, 1870.

X of 1870.

44. An entry made in a record-of-rights in accordance with the law for the time being in force, or in an annual record in accordance with the provisions of this Chapter and the rules thereunder, shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

45. If any person considers himself aggrieved as to any right of which he is in possession by an entry in a record-of-rights or in an annual record, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877.

I of 1877.

Supplemental Provisions.

Power to make rules respecting records and other matters connected therewith.

46. The Financial Commissioner may make rules—

- (a) prescribing the language in which records and registers under this Chapter are to be made;

*The Punjab Land-revenue Bill.**(Chapter IV.—Records.—Section 47. Chapter V.—Assessment.—Sections 48-56.)*

(b) prescribing the form of those records and registers, and the manner in which they are to be prepared, signed and attested;

(c) for the survey of land so far as may be necessary for the preparation and correction of those records and registers;

(d) for the conduct of inquiries by Revenue-officers under this Chapter; and

(e) generally for the guidance of Revenue-officers and village officers in matters pertaining to records and registers mentioned or referred to in this Chapter.

47. (1) The Financial Commissioner may direct that a record-of-rights and annual records for groups of estates be made for any group of neighbouring estates instead of separately for each of the estates.

(2) The provisions of this Chapter with respect to a record-of-rights and annual record for an estate shall then, so far as they can be made applicable, apply to a record-of-rights and annual record for a group of estates.

CHAPTER V.

ASSESSMENT.

48. (1) All land, to whatever purpose applied and wherever situate, is liable to the payment of land-revenue to the Government, except such land as has been wholly exempted from that liability by special contract with the Government or by the provisions of any law for the time being in force.

(2) Land-revenue may be assessed in cash or in kind, or partly in cash and partly in kind, as the Local Government may direct.

(3) Land may be assessed to land-revenue notwithstanding that that revenue, by reason of its having been assigned, released, compounded for or redeemed is not payable to the Government.

General Assessments.

49. (1) A general re-assessment of the land-revenue of a district or tahsil shall not be undertaken without the previous sanction of the Governor-General in Council and notification of that sanction.

(2) In granting the sanction the Governor-General in Council may prescribe such principles of assessment and give such other instructions as he thinks fit.

50. (1) The assessment shall be made by a Revenue-officer.

(2) Before making it that officer shall report his proposed method of assessment for the sanction of the Financial Commissioner in such form as the Financial Commissioner, with the previous sanction of the Local Government, may prescribe.

51. (1) When the Revenue-officer has obtained the sanction of the Financial Commissioner to his proposed method of assessment, he shall make an order determining the assessment proper for each estate and announce it in such manner as the Local Government may prescribe.

(2) At the time of announcing the assessment he shall also declare the date from which it is to take effect, and, subject to the other provisions of this Act, it shall take effect accordingly.

52. (1) The landowner may, within thirty days from the date of the announcement of the assessment, present a petition to the Revenue-officer for a re-consideration of the amount, form or conditions of the assessment.

(2) Where the land-revenue is assigned, the assignee thereof may within thirty days from that date present a like petition to the Revenue officer.

(3) The order passed by the Revenue-officer on the petition shall set forth his reasons for granting or refusing it.

53. (1) An assessment of the land-revenue of a district or tahsil shall not be considered final until it has been confirmed by the Local Government.

(2) At any time before an assessment is so confirmed the Commissioner or Financial Commissioner may modify the assessment of any estate in the district or tahsil.

(3) The Local Government shall, when confirming an assessment under sub-section (1), fix the period for which the assessment is to be in force.

54. Notwithstanding the expiration of the period fixed for the continuance of an assessment under sub-section (3) of the last foregoing section, the assessment shall remain in force till a new assessment takes effect.

55. (1) At any time within ninety days from the date of the announcement of an assessment the landowner or, where there are more landowners than one, any of them who would be individually or collectively liable for more than half the sum assessed may give notice to the Revenue-officer of refusal to be liable for the assessment.

(2) When the Revenue-officer receives a notice under sub-section (1), the Collector may take possession of the estate and deal with it, as nearly as may be, as if the annulment of the assessment thereof had been ordered as a process for the recovery of an arrear of land-revenue due thereon.

(3) While the estate is in the possession of the Collector, the landowner or landowners shall be entitled to receive from the Government an allowance, to be fixed by the Financial Commissioner, which shall not be less than five or more than ten per cent. of the net income realized by the Government from the estate.

56. (1) If the assessment announced under section 51 is in whole or in part a fixed assessment of an estate for a term of years, the Revenue-officer shall, before the date on which the first instalment thereof becomes payable, make an order distributing it over the several holdings comprised in the estate and make and publish a record of the distribution.

The Punjab Land-revenue Bill.

(Chapter V.—Assessment.—Sections 57-60. Chapter VI.—Collection of Land-revenue.—Sections 61-62.)

(2) The Collector may for sufficient reason make an order revising that record at any time while the assessment continues to be in force, and publish the record so revised.

(3) If the assessment announced under section 51 is in the form of rates chargeable according to the results of each year or harvest, a Revenue-officer shall from year to year or from harvest to harvest, as the conditions of the assessment may require, make and publish, not later than one month before the first instalment of the land-revenue falls due, a record of the amount payable in respect of each holding.

(4) The Financial Commissioner may make rules for the guidance of Revenue-officers in making, publishing and revising records under this section.

57. (1) Any person affected by a record made under sub-section (1) or sub-section (3) of the last foregoing section or by the revision of a record under sub-section (2) of that section, may, within thirty days from the date of the publication of the record, present a petition to the Revenue-officer for a re-consideration of the record so far as it affects him.

(2) The order passed by the Revenue-officer on the petition shall set forth his reasons for granting or refusing it.

58. An appeal from an order under the last foregoing section or section 52 shall lie to the Commissioner, and from the appellate order of the Commissioner to the Financial Commissioner.

Special Assessments.

59. (1) Special assessments may be made by Revenue-officers in the following cases, namely:

- (a) when estates are formed under the next following section;
- (b) when land-revenue which has been released or assigned is resumed;
- (c) when waste-lands are sold, leased or granted by the Government;
- (d) when the assessment of any land has been annulled or the landowner has refused to be liable therefor, and the term for which the land was to be managed by the Collector or his agent or let in farm has expired;
- (e) when assessments of land-revenue require revision in consequence of the action of water or sand or of calamity of season or from any other cause;
- (f) when revenue due to the Government on account of pasture or other natural products of land, or on account of mills, fisheries or natural products of water, or on account of other rights described in section 41 or section 42, has not been included in an assessment made under the foregoing provisions of this Chapter.

(2) The Financial Commissioner may make rules for the guidance of Revenue-officers in making special assessments, and may confirm such assessments.

(3) The foregoing provisions of this Chapter with respect to general assessments shall, subject

to such modifications thereof as the Financial Commissioner may prescribe by rules under the last foregoing sub-section, regulate the procedure of Revenue-officers making special assessments.

60. (1) When, in the opinion of the Collector or of an officer making a general re-assessment of land-revenue under the foregoing provisions of this Chapter, the waste-land belonging to or adjoining an estate is so extensive as to exceed the requirements of the owners of the estate with reference to pasturage or other useful purpose, the Collector or officer may at any time, with the previous sanction of the Financial Commissioner, make a separate assessment of the waste-land which he considers to be so in excess, and offer that land at that assessment, for such term and on such conditions as he thinks fit, to the owners of the estate to which it belongs, and, if they refuse the offer, to the owners of any estate which the land adjoins, and, if they also refuse the offer, to any other person.

(2) When the owners of the estate to which the waste-land belongs refuse the offer, the Collector shall assign to them an annual allowance not less than five and not more than ten per cent. of the net income realized by the Government from the land.

CHAPTER VI.

COLLECTION OF LAND-REVENUE.

61. (1) In the case of every estate, the entire estate and the landowner or, if there are more than one, the landowners jointly and severally shall be liable for the land-revenue for the time being assessed on the estate:

Provided that—

- (a) the Local Government, with the previous sanction of the Governor-General in Council, may by notification declare that in any estate a holding or its owner shall not be liable for any part of the land-revenue for the time being assessed on the estate except that part which is payable in respect of the holding; and
 - (b) when there are superior and inferior landowners in the same estate, the Financial Commissioner may by rule, or by special order in each case, determine whether the superior or inferior landowners shall be liable for the land-revenue, or whether both shall be so liable, and, if so, in what proportions.
- (2) A notification under proviso (a) to sub-section (1) may have reference to any single estate or to any class of estates or estates generally in any local area.

62. (1) The land-revenue for the time being assessed on an estate or payable in respect of a holding shall be the first charge upon the rents, profits and produce thereof.

(2) Without the previous consent of the Collector, the rents, profits or produce of an estate or holding shall not be liable to be taken in execution of a decree or order of any Court until the land-revenue chargeable against the rents, profits or produce, and any arrear of land-revenue due in respect of the estate or holding, have been paid.

The Punjab Land-revenue Bill.
(Chapter VI.—Collection of Land-revenue.—Sections 63-71.)

63. (1) Notwithstanding anything in any record-of-rights, the Financial Commissioner may fix the number and amount of the instalments, and the times, places and manner, by, at and in which land-revenue is to be paid.

(2) Until the Financial Commissioner otherwise directs, land-revenue shall be payable by the instalments, at the times and places and in the manner, by, at and in which it is payable at the commencement of this Act.

64. (1) The Financial Commissioner may make rules consistent with this Act to regulate the collection, remission and suspension of land-revenue, and may by those rules determine the circumstances and terms in and on which assigned land-revenue may be collected by the assignee.

(2) Where land-revenue due to an assignee is collected by a Revenue-officer, there shall be deducted from the sum collected such a percentage on account of the cost of collection as the Financial Commissioner may by rule in this behalf prescribe.

(3) A suit for an arrear of assigned land-revenue shall not be entertained unless there is annexed to the plaint at the time of the presentation thereof a document under the hand of the Collector specially authorising the institution of the suit.

65. The costs of any process issued under this Chapter shall be recoverable as part of the arrear of land-revenue in respect of which the process was issued.

66. A statement of account certified by a Revenue-officer shall be conclusive proof of the existence of an arrear of land-revenue, of its amount and of the person who is the defaulter.

67. Subject to the other provisions of this Act, an arrear of land-revenue may be recovered by any one or more of the following processes, namely :

- (a) by service of a writ of demand on the defaulter ;
- (b) by arrest and detention of his person ;
- (c) by distress and sale of his moveable property and uncut or ungathered crops ;
- (d) by transfer of the holding in respect of which the arrear is due ;
- (e) by attachment of the estate or holding in respect of which the arrear is due ;
- (f) by annulment of the assessment of that estate or holding ;
- (g) by sale of that estate or holding ;
- (h) by proceedings against other immoveable property of the defaulter.

68. A writ of demand may be issued by a Revenue-officer on or after the day following that on which an arrear of land-revenue accrues.

69. (1) At any time after an arrear of land-revenue has accrued a Revenue-officer may issue a warrant directing an officer named therein to arrest the defaulter and bring him before the Revenue-officer.

(2) When the defaulter is brought before the Revenue-officer, the Revenue-officer may cause him to be taken before the Collector, or may keep him under personal restraint for a period not exceeding ten days and then, if the arrear is still unpaid, cause him to be taken before the Collector.

(3) When the defaulter is brought before the Collector, the Collector may issue an order to the officer in charge of the civil jail of the district, directing him to confine the defaulter in the jail for such period, not exceeding one month from the date of the order, as the Collector thinks fit.

(4) The process of arrest and detention shall not be executed against a defaulter who is a female, a minor, a lunatic or an idiot.

70. (1) At any time after an arrear of land-revenue has accrued, the moveable property and uncut or ungathered crops of the defaulter may be distrained and sold by order of a Revenue-officer.

(2) The distress and sale shall be conducted, as nearly as may be, in accordance with the law for the time being in force for the attachment and sale of moveable property under the decree of a Revenue Court constituted under the Punjab Tenancy Act, 1887 :

Provided that, in addition to the particulars exempted by that law from liability to sale, so much of the produce of the land of the defaulter as the Collector thinks necessary for seed-grain and for the subsistence, until the harvest next following, of the defaulter and his family, and of any cattle exempted by that law, shall be exempted from sale under this section.

71. (1) At any time after an arrear of land-revenue has accrued on a holding, the Collector may transfer the holding to any person being a land-owner of the estate in which the holding is situate and not being a defaulter in respect of his own holding, on condition of his paying the arrear before being put in possession of the holding, and on such further conditions as the Collector may see fit to prescribe.

(2) The transfer may, as the Collector thinks fit, be either till the end of the agricultural year in which the defaulter pays to the transferee the amount of the arrear which the transferee paid before being put in possession of the holding, or for a term not exceeding fifteen years from the commencement of the agricultural year next following the date of the transfer.

(3) The Collector shall report to the Financial Commissioner any transfer made by him under this section, and the Financial Commissioner may set aside the transfer or alter the conditions thereof, or pass such other order as he thinks fit.

(4) A transfer under this section shall not affect the joint and several liability of the land-owners of the estate in which it is enforced.

(5) In respect of all rights and liabilities arising under this Act the person to whom the holding is transferred shall, subject to the conditions of the transfer, stand in the same position as that in which the defaulter would have stood if the holding had not been transferred.

(6) When the transfer was for a term, the holding shall, on the expiration of the term, be restored by the Collector to the defaulter free of

The Punjab Land-revenue Bill.
(Chapter VI.—Collection of Land-revenue.—Sections 72-75.)

any claim on the part of the Government or the transferee for any arrear of land-revenue or rates and cesses due in respect thereof.

72. (1) At any time after an arrear of land-Attachment of estate revenue has accrued, the Collector may cause the estate or holding in respect of which the arrear is due to be attached and taken under his own management or that of an agent appointed by him for that purpose.

(2) The Collector or the agent shall be bound by all the engagements which existed between the defaulter and his tenants, if any, and shall be entitled to manage the land and to receive all rents and profits accruing therefrom to the exclusion of the defaulter until the arrear has been satisfied, or until the Collector restores the land to the defaulter.

(3) All surplus profits of the land attached beyond the cost of attachment and management and the amount necessary to meet the current demand for land-revenue and rates and cesses shall be applied in discharge of the arrear.

(4) Land shall not be attached for the same arrear for a longer term than five years from the commencement of the agricultural year next following the date of the attachment, but, if the arrear is sooner discharged, the land shall be released and the surplus receipts, if any, made over to the landowner.

73. (1) When an arrear of land-revenue has been due for a longer period than one month, and the foregoing processes are not deemed sufficient for the recovery thereof, the Financial Commissioner may, in addition to or instead of all or any of those processes, order the existing assessment of the estate or holding in respect of which the arrear is due to be annulled.

(2) The provisions of this section shall not be put in force for the recovery of an arrear of land-revenue which has accrued on land—

- (a) while under attachment under the last foregoing section, or
- (b) while under the charge of the Court of Wards.

(3) When the assessment of any land has been annulled, the Collector may, with the previous sanction of the Financial Commissioner, either manage the land himself or through an agent, or let it in farm to any person willing to accept the farm, for such term and on such conditions as may be sanctioned by the Financial Commissioner:

Provided that the term for which land may be so managed or farmed shall not be longer than fifteen years from the commencement of the agricultural year next following the date of the annulment.

(4) At some time before the expiration of that term the Collector shall assess the estate or holding at such sum as the Financial Commissioner approves for the remainder of the term of the current assessment of the district or tahsil, and shall announce the assessment to the landowner.

(5) The landowner may give notice to the Collector of refusal to be liable for the assessment within thirty days from the date on which the assessment was announced to him.

(6) If notice is so given, the Collector may, with the previous sanction of the Financial Commissioner, take the estate or holding under direct management or farm it for the remainder of the term of the current assessment of the district or tahsil, or for any period within that term which the Financial Commissioner may fix.

(7) When the assessment of a holding is annulled, the joint responsibility of the other landowners of the estate for the land-revenue of that holding becoming due after the annulment shall be in abeyance until a new assessment takes effect.

(8) The Financial Commissioner may direct that any contract made by the defaulter, or by any person through whom the defaulter claims, with respect to any land comprised in an estate or holding of which the assessment has been annulled shall not be binding on the Collector or his agent or farmer during the period for which the estate or holding remains under the management of the Collector or his agent or is let in farm.

74. (1) When any land is attached under section 72, or when the assessment of any land has been annulled under the last foregoing section, the Collector shall make proclamation thereof.

(2) No payment made by any person to the defaulter before the making of the proclamation on account of rent or any other asset in anticipation of the usual time for the payment shall, without the special sanction of the Collector, be credited to that person or relieve him from liability to make the payment to the Collector or his agent or farmer.

(3) No payment made after the making of the proclamation on account of rent or any other asset of the estate or holding to any person other than the Collector or his agent or farmer shall be credited to the person making the payment or relieve him from liability to make the payment to the Collector or his agent or farmer.

75. When an arrear of land-revenue has accrued and the foregoing processes are not deemed sufficient for the recovery thereof, the Collector, with the previous sanction of the Financial Commissioner, may, in addition to, or instead of, all or any of those processes, and subject to the provisions hereinafter contained, sell the estate or holding in respect of which the arrear is due:

Provided that land shall not be sold for the recovery of—

- (a) any arrear which has accrued while the land was under the charge of the Court of Wards, or was so circumstanced that the Court of Wards might have exercised jurisdiction over it under the provisions of section 35 of the Punjab Laws Act, 1872, clause (a), (b), (c) or (d); or
- (b) any arrear which has accrued while the land was under attachment under section 72 of this Act; or
- (c) any arrear which has accrued while the land was held under direct management by the Collector or in farm by any other person, under section 73, after either an annulment of assessment or a refusal to be liable therefor.

The Punjab Land-revenue Bill.
(Chapter VI.—Collection of Land-revenue.—Sections 76-82.)

76. (1) Land sold under the last foregoing section shall be sold free of all incumbrances; and all grants and contracts previously made by any person other than the purchaser in respect of the land shall become void as against the purchaser at the sale.

Effect of sale on incumbrances.

(2) Nothing in sub-section (1) shall affect—

(a) a tenant's right of occupancy, unless the right was created by the defaulter himself, or

(b) any lease at a fair rent, temporary or perpetual, for the erection of a dwelling-house or manufactory, or for a mine, garden, tank, canal, place of worship or burial-ground, so long as the land continues to be used for the purpose specified in the lease, or

(c) any incumbrance, grant, contract or right of occupancy specially saved by order of the Financial Commissioner and proclaimed as hereinafter provided.

77. (1) If the arrear cannot be recovered by any of the processes hereinafter provided, or if the Financial Commissioner considers the enforcement of any of those processes to be inexpedient, the Collector may, where the defaulter owns any other estate or holding, or any share in any other estate or holding, or any other immoveable property, proceed under the provisions of this Act against that property as if it were the land in respect of which the arrear is due:

Proceedings against other immoveable property of defaulter.

Provided that no interests save those of the defaulter alone shall be so proceeded against, and no incumbrances created, grants made or contracts entered into by him in good faith shall be rendered invalid by reason only of his interests being proceeded against.

(2) When the Collector determines to proceed under this section against immoveable property other than the land in respect of which the arrear is due, he shall issue a proclamation prohibiting the transfer or charging of the property.

(3) The Collector may at any time by order in writing withdraw the proclamation, and it shall be deemed to be withdrawn when either the arrear has been paid or the interests of the defaulter in the property have been sold for the recovery of the arrear.

(4) Any private alienation of the property, or of any interest of the defaulter therein, whether by sale, gift, mortgage or otherwise, made after the issue of the proclamation and before the withdrawal thereof shall be void.

(5) In proceeding against property under this section, the Collector shall follow, as nearly as the nature of the property will admit, the procedure prescribed for the enforcement of process against land on which an arrear of land-revenue is due.

78. (1) Notwithstanding anything in section 66, when proceedings are taken under this Act for the recovery of an arrear, the person against whom the proceedings are taken may, if he denies his liability for the arrear or any part thereof and pays the same under protest made in writing at the time

Remedies open to person denying his liability for an arrear.

of payment and signed by him or his agent, institute a suit in a Civil Court for the recovery of the amount so paid.

(2) A suit under sub-section (1) must be instituted in a Court having jurisdiction in the place where the office of the Collector of the district in which the arrear or some part thereof accrued is situate.

Procedure in Sales.

79. (1) On the receipt of the sanction of the Financial Commissioner to the sale of any immoveable property, the Collector shall issue a proclamation of the intended sale, specifying—

(a) the date, time and place of the sale;

(b) the property to be sold, and, if it is an estate or holding, the land-revenue assessed thereon or payable in respect thereof;

(c) if the property is to be sold for the recovery of an arrear due in respect thereof, the incumbrances, grants, contracts and rights of occupancy, if any, specially saved by order of the Financial Commissioner under section 76, sub-section (2), clause (c);

(d) if the property is to be sold otherwise than for the recovery of an arrear due in respect thereof, any incumbrance, grant or contract to which the property is known to be liable; and

(e) the amount for the recovery of which the sale is ordered.

(2) The proclamation shall also state that any person intending to claim a right of pre-emption must, on pain of forfeiting the right, give notice of his intention to the Collector on an office-day before that fixed for the sale.

(3) The place of sale specified under clause (a) of sub-section (1) must be either the office of the Collector or some place appointed by the Collector in this behalf and situate in or near the property to be sold.

80. A Revenue-officer shall not be answerable for any error, mis-statement or omission in any proclamation under the last foregoing section, unless the same has been committed or made dishonestly.

Indemnity to Revenue-officer with respect to contents of proclamation.

81. (1) A copy of the proclamation shall be served on the defaulter and be posted in a conspicuous part of the office of the Tahsildár of the tahsil in which the property to be sold is situate.

(2) After a copy of the proclamation has been served on the defaulter and posted in the office of the Tahsildár, a copy thereof shall be posted in the office of the Collector.

(3) The proclamation shall be further published in manner prescribed in section 22 and in such other manner as the Collector thinks expedient.

82. (1) The sale shall not take place on a Sunday or other holiday, or till after the expiration of at least thirty days from the date on which the copy of the proclamation was posted in the office of the Collector.

(2) The sale shall be by public auction, and shall be conducted either by the Collector in person or by a Revenue-officer specially appointed by him in this behalf.